CONSUMER PROTECTION IN THE STATES

Appendix B

State-by-State Summaries of State UDAP Statutes

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
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	
2. Lack of preconditions to public enforcement		
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Strong	
3. Available remedies		
a. Equitable relief	Strong	Ala. Code § 8-19-8(a)
b. 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."
c. Civil penalty amount for initial violations	Weak	Ala. Code § 8-19-11(b) – up to \$2000 per violation if knowing

CONSUMER ACCESS TO JUSTICE	COMMENTS
1. Lack of preconditions	

for a suit		
a. 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 <i>reasonably describing the unfair or deceptive</i> <i>act or practice relied upon</i> 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 statutes are to be liberally construed, it is likely that Alabama courts will find that reliance is not required.
b. Does not require a showing of public interest or public impact	Strong	
c. Does not require pre- suit notice to the defendant	Weak	Ala. Code § 8-19-10(e) requires advance notice.
2. Available remedies		
a. Compensatory damages	Strong	Ala. Code § 8-19-10(a)(1)
b. Multiple or punitive damages	Strong	Ala. Code § 8-19-10(a)(2)
c. Attorney fees for consumers	Strong	Ala. Code § 8-19-10(a)(3)
3. Class actions		
a. Available under UDAP statute and other law	Weak	Prohibited by Ala. Code § 8-19-10(f)
4. Statute coverage		
a. Creditors and credit	Weak	Trade or commerce is broadly defined by Ala. Code § 8-19-3(8) to include "distribution of any thing of value," but Ala. Code § 8-19-

		7(3) exempts any bank or affiliate regulated by a state or federal agency. <i>See Deerman v. Fed.</i> <i>Home Loan Mortg. Corp.</i> , 955 F. Supp. 1393 (N.D. Ala. 1997), <i>aff'd without op.</i> , 140 F.3d 1043 (11 th Cir. 1998).
b. Insurance	Weak	Ala. Code § 8-19-7(3) exempts "any person or activity which is subject to 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 post-sale acts. In light of the broad definition of "trade or commerce" at Ala. Code § 8-19- 3(8), the broad prohibition of unconscionable, false, misleading, or deceptive acts at 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 are covered.
e. Real estate	Strong	Ala. Code § 8-19-3(3) defines "goods" to include real property.

ALASKA

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Strong	Alaska Stat. § 45.50.471(a)
or unconscionable acts		
b. Broadly prohibits	Strong	Alaska Stat. § 45.50.471(a)
deceptive acts		
c. Provides the state agency	Strong	Alaska Stat. § 45.50.491. State has adopted
substantive rulemaking		substantive rules.
authority		
	I	
2. Lack of preconditions		
to public enforcement		
a. Allows public	Strong	
enforcement without		
requiring a showing of the		
defendant's intent or		
knowledge		
3. Available remedies		
a. Equitable relief	Strong	Alaska Stat. § 45.50.501(a)
b. Restitution for	Strong	Alaska Stat. § 45.50.501(b)
consumers		
c. Civil penalty amount for	Strong	Alaska Stat. § 45.50.551 (\$1000 to \$25,000; no
initial violations		willfulness or knowledge requirement)

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. 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."
b. Does not require a showing of public interest or public impact	Strong	
c. Does not require pre-suit notice to the defendant	Strong	Alaska Stat. § 45.50.531 only requires pre-suit notice when the consumer seeks an injunction.
	-	-
2. Available remedies		
a. Compensatory damages	Strong	Alaska Stat. § 45.50.531(c)
b. Multiple or punitive damages	Strong	Alaska Stat. § 45.50.531(c)
c. 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.
3. Class actions		
a. Available under UDAP	Strong	The statute does not contain any restrictions on
statute and other law		class actions.
	ſ	
4. Statute coverage		
a. Creditors and credit	Mixed	Alaska Stat. § 45.50.481(a)(1) says that the statute does not apply to "an act or transaction regulated under laws administered by the state, by a regulatory board or commission except as provided by Alaska Stat. § 45.50.471(b)(27) and (30), or officer acting under statutory authority of the state or of the United States, unless the law regulating the act or transaction does not prohibit the practices declared unlawful in Alaska Stat. § 45.50.571." 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. Central Peninsula General Hosp.</i> , 151 P.3d 319, 329 (Alaska 2006). As a result, this section does not create a blanket exemption for creditors or credit. However, it is still relatively broad, as it denies consumers a UDAP remedy whenever another law prohibits a

		creditor's practice. In addition, Alaska Stat. § 45.50.481(a)(3) exempts "an act or transaction regulated under AS 06.05," the Alaska Banking Code. However, Alaska Stat. § 45.50.481(b) states that this exemption does not apply to transactions between banks and their customers, borrowers,
		or depositors, so the exemption has little effect on consumers. A final issue is the definition of "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" under Alaska's UDAP statute. However, this decision was legislatively overruled in 2003 by the addition of 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." In addition, the private cause of action at Alaska Stat. § 45.50.531 is not limited in any way that would exclude credit.
b. Insurance	Weak	Insurers appear to be exempt from UDAP coverage in Alaska. <i>See O.K. Lumber Co., Inc. v.</i> <i>Providence Washington Ins. Co.</i> , 759 P.2d 523 (Alaska 1988) (dismissing a UDAP claim against an insurer based upon the exemption in Alaska Stat. § 45.50.481(a)(3)).
c. Utilities	Mixed	Alaska Stat. § 45.50.481(a)(1) says that the statute does not apply to "an act or transaction regulated under laws administered by the state, by a regulatory board or commission except as provided by ALASKA STAT. § 45.50.471(b)(27) and (30), or officer acting under statutory authority of the state or of the United States, unless the law regulating the act or transaction does not prohibit the practices declared unlawful in ALASKA STAT. § 45.50.571." 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.</i> <i>Central Peninsula General Hosp.</i> , 151 P.3d 319, 329 (Alaska 2006). As a result, this section does

		not create a blanket exemption for utilities.
		However, it is still relatively broad, as it denies
		consumers a UDAP remedy whenever another
		law prohibits a utility's practice.
d. Post-sale acts (debt	Strong	See State v. O'Neill Investigations, 609 P.2d 520
collection, repossession)		(Alaska 1980).
e. Real estate	Strong	State v. First National Bank of Anchorage, 660
		P.2d 406, 412-14 (Alaska 1982), the Supreme
		Court of Alaska held that real estate transactions are not covered under the state UDAP statute.
		The court explained that they were "persuaded
		that the entire thrust of the Consumer Protection
		Act is directed at regulating practices relating to
		transactions involving consumer goods and
		services." Id. at 412. See also U.S. Jaycees v.
		Richardet, 666 P.2d 1008 (Alaska 1983) (citing
		First National Bank of Anchorage for the
		proposition that real estate transactions are not
		covered under the state UDAP statute. However,
		after those decisions, 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."

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Weak	
or unconscionable acts		
b. Broadly prohibits	Strong	Ariz. Rev. Stat. § 44-1522
deceptive acts	_	
c. Provides the state agency	Weak	Ariz. Rev. Stat. § 44-1526(A) only authorizes
substantive rulemaking		procedural rules.
authority		

2. Lack of preconditions to public enforcement		
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.</i> <i>Babbitt v. Goodyear Tire & Rubber Co.</i> , 626 P.2d 1115, 1118 n. 1 (Ariz. App. 1981).

Strong	Ariz. Rev. Stat. § 44-1528(A)
Strong	Ariz. Rev. Stat. § 44-1528(A)
Strong	Ariz. Rev. Stat. § 44-1531(A) (\$10,000 per
	violation if willful)
	Strong

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. 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." However, an early
		decision, <i>Peery v. Hansen</i> , 585 P.2d 574, 577

	~	(Ariz. App. 1978), held, over a strong dissent, that reliance was required. In <i>Siemer v.</i> <i>Associates First Capital Corp</i> , 2001 WL 35948712 (D. Ariz. 2001), the court stated that reliance is required in private actions, but found that simply purchasing the product amounted to reliance, a standard significantly more favorable to consumers than the common law fraud reliance standard.
b. Does not require a showing of public interest or public impact	Strong	
c. Does not require pre- suit notice to the defendant	Strong	
2. Available remedies		
a. Compensatory damages	Strong	Sellinger v. Freeway Mobile Home Sales, Inc., 521 P.2d 1119 (Ariz. 1974) (finding that Arizona's UDAP statute creates an implied private right of action for damages).
b. Multiple or punitive damages	Weak	
c. Attorney fees for consumers	Weak	Sellinger v. Freeway Mobile Home Sales, Inc., 521 P.2d 1119 (Ariz. 1974), held that Arizona's UDAP statute creates an implied private right of action for damages but not for attorney fees.
3. Class actions		1
a. Available under UDAP statute and other law	Strong	Nothing in the statute precludes class actions, and Arizona courts have allowed UDAP class actions. <i>See, e.g., Siemer v. Associates First</i> <i>Capital Corp.</i> , 2001 WL 35948712 (D. Ariz., 2001); <i>Qwest Corp. v. Kelly</i> , 59 P.3d 789 (Ariz. App. 2002); <i>London v. Green Acres</i> <i>Trust</i> , 765 P.2d 538 (Ariz. App. 1988).
4. Statute coverage		
a. Creditors and credit	Strong	Villegas v. Transamerica Fin. Servs., Inc., 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</i> .

		Allstate Ins. Co., 5 P.3d 940 (Ariz. App. 2000), the Court of Appeals of Arizona 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.
c. Utilities	Strong	The Court of Appeals of Arizona made clear in <i>Qwest Corp. v. Kelly</i> , 59 P.3d 789 (Ariz. App. 2002) that Arizona's UDAP statute covers utilities.
d. Post-sale acts (debt collection, repossession)	Undecided	In <i>Walker v. Gallegos</i> , 167 F. Supp. 2d 1105, 1107 (D. Ariz. 2001), a federal district court interpreting Arizona's UDAP statute held that repossession efforts "do not as a matter of law involve the sale or advertisement of merchandise as those terms are defined." While this is not a dispositive state court ruling, it creates an impediment for consumers.
e. Real estate	Strong	Ariz. Rev. Stat. § 44-1521(5) defines "merchandise" to include real estate.

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Strong	Ark. Code § 4-88-107(a) (prefatory language) &
or unconscionable acts		(a)(10) (catchall)
b. Broadly prohibits	Strong	Ark. Code § 4-88-107(a), (a)(10)
deceptive acts		
c. Provides the state agency	Weak	
substantive rulemaking		
authority		
2. Lack of preconditions		
to public enforcement		
a. Allows public	Mixed	Some subsections of Ark. Code § 4-88-107
enforcement without		require intent or knowledge, but the general
requiring a showing of the		prohibitions in $ 4-88-107(a) $ and $ (a)(10) $ do not.
defendant's intent or		
knowledge		
	1	
3. Available remedies		
a. Equitable relief	Strong	Ark. Code § 4-88-113(a)(1)
b. Restitution for	Strong	Ark. Code § 4-88-113(a)(2)
consumers		
c. Civil penalty amount for	Strong	Ark. Code § 4-88-113(a)(3): \$10,000 per
initial violations		violation

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Undecided	Arkansas courts have not directly addressed the question whether reliance is required. In <i>Frelin v. Oakwood Homes Corp.</i> , 2002 WL 31863487 (Ark. Cir. 2002), one court discussed reliance as a requirement for common law fraud, but immediately following that, discussed the state's UDAP statute and made no mention of reliance. This decision, and the general rule that UDAP statutes are to

		be liberally interpreted, make it likely that Arkansas courts will find that reliance is not required, but the issue has not yet been decided.
b. Does not require a showing of public interest or public impact	Strong	
c. Does not require pre- suit notice to the defendant	Strong	
2. Available remedies		
a. Compensatory damagesb. Multiple or punitive damages	Strong Weak	Ark. Code § 4-88-113(f)
c. Attorney fees for consumers	Strong	Ark. Code § 4-88-113(f)
3. Class actions		
a. Available under UDAP statute and other law	Strong	Anderson v. Stewart, 366 Ark. 203, 2006 WL 1118892 (Ark. 2006).
4. Statute coverage		
a. Creditors and credit	Undecided	Ark. Code § 4-88-101(3) says that statute does not apply to "actions or transactions permitted under laws administered by" the insurance commissioner, the banking commissioner, or another state or federal regulatory body, unless the director of one of these agencies asks the Attorney General to act. One federal case, <i>Jones v. Unum Life Ins. Co.</i> , 2006 WL 3462130 (E.D. Ark., Nov. 29, 2006), interprets this language to as a blanket exemption for insurance. That decision deals with insurance rather than credit, however, and is arguably contrary to the rule that UDAP statutes should be liberally construed. In addition, the Arkansas Supreme Court upheld the application of the UDAP statute to a payday lender that was regulated as a check casher in <i>Anderson v. Stewart</i> , 234 S.W.3d 295 (Ark. 2006). Although the decision does not address the coverage questions, it supports the view that the statute applies to creditors and credit.
b. Insurance	Weak	Ark. Code § 4-88-101(3) says that statute does not apply to "actions or transactions permitted

		under laws administered by" the insurance commissioner, the banking commissioner, or another state or federal regulatory body, unless the director of one of these agencies asks the AG to act. One federal case, <i>Jones v. Unum</i> <i>Life Ins. Co.</i> , 2006 WL 3462130 (E.D. Ark., Nov. 29, 2006), interprets this language to as a blanket exemption for insurance. While that decision is arguably contrary to the rule that UDAP statutes should be liberally construed, it stands as an impediment to consumers.
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. Other states have interpreted similar language to exempt only specifically authorized acts, rather than as a blanket exemption for utilities, but Arkansas courts have not yet had occasion to decide the issue.
d. Post-sale acts (debt collection, repossession)	Strong	Although Arkansas courts have not yet reached the question, Ark. Code § 4-88- 107(a)(10), prohibits "any other unconscionable, false, or deceptive act or practice in business, commerce, or trade." Nothing in the statute excludes post-sale acts from the definition of "business, commerce, or trade."
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."

CALIFORNIA

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

Cal. Civ. Code §§ 1750 through 1785 (West) Consumers Legal Remedies Act

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Strong	Cal. Bus. & Prof. Code § 17200
or unconscionable acts		
b. Broadly prohibits	Strong	Cal. Bus. & Prof. Code § 17200
deceptive acts		
c. Provides the state agency	Weak	
substantive rulemaking		
authority		
	I	[
2. Lack of preconditions		
to public enforcement		
a. Allows public	Strong	
enforcement without		
requiring a showing of the		
defendant's intent or		
knowledge		
	I	L
3. Available remedies		
a. Equitable relief	Strong	Cal. Bus. & Prof. Code § 17203
b. Restitution for	Strong	Cal. Bus. & Prof. Code § 17203 (restitution)
consumers	Suong	
c. Civil penalty amount for	Weak	Cal. Bus. & Prof. Code § 17206: up to \$2500
initial violations	,, cur	per violation
	<u>I</u>	

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Undecided	This issue has not yet been decided and the matter is currently before the state supreme court in <i>Pfizer Inc. v. Superior Court</i> , 45 Cal.Rptr.3d 840 (App. 2006), <i>review granted</i> , 146 P.3d 1250 (Cal. 2006).
b. Does not require a	Strong	

showing of public interest		
or public impact		
c. 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. (California's other UDAP statute, the Consumers Legal Remedies Act, Cal. Civil Code § 1782, does require pre-suit notice, however).
2. Available remedies		
a. Compensatory damages	Strong	Cal. Bus. & Prof. Code § 17202 allows restitution, although it does not allow damages. In addition, the Cal. Consumers Legal Remedies Act, Cal. Civil Code § 1780, allows consumers to recover damages.
b. Multiple or punitive damages	Strong	Cal. Civ. Code § 1780 allows punitive damages.
c. Attorney fees for consumers	Strong	Cal. Civ. Proc. Code § 1021.5 (allowing fees, in court's discretion, to prevailing party where 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 recovery). 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),
3. Class actions		
a. Available under UDAP statute and other law	Strong	
1 Statute coverage		
4. Statute coverage a. Creditors and credit	Strong	Cal. Bus. & Prof. Code § 17200 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.</i> , <i>Perdue v. Crocker Nat'l Bank</i> , 702 P.2d 503 (Cal. 1985).
b. Insurance	Strong	Cal. Bus. & Prof. Code § 17200 defines "unfair competition" to include "any unlawful, unfair or fraudulent business act or practice." California courts have held that the state

		insurance code does not displace the UDAP statute except for matters relating to rate setting: <i>Quelimane Co. v. Stewart Title</i> <i>Guaranty Co.</i> , 960 P.2d 513 (Cal. 1998).
c. Utilities	Strong	Although they have been careful not to interfere with the jurisdiction of the Public Utilities Commission, California courts have applied the UDAP statute to utility matters. <i>People ex rel. Orloff v. Pacific Bell</i> , 80 P.3d 201 (Cal. 2001); <i>Wise v. Pacific Gas & Elect.</i> , 91 Cal. Rptr. 2d 479 (App. 1999).
d. Post-sale acts (debt collection, repossession)	Strong	Barquis v. Merchants Collection Assn., 496 P.2d 817 (Cal. 1972); Yu v. Signet Bank/Virginia, 82 Cal.Rptr.2d 304 (App. 1999).
e. Real estate	Strong	The statutory language 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>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)

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Weak	
or unconscionable acts		
b. Broadly prohibits	Weak	
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 Look of mason ditions		
2. Lack of preconditions to public enforcement		
a. Allows public	Weak	Most of the broad substantive prohibitions, such
enforcement without	WCak	as Colo. Rev. Stat. \S 6-1-105(1)(a), (b), (c), (e),
requiring a showing of the		(f), (g), and (o), require knowledge.
defendant's intent or		
knowledge		
3. Available remedies		
a. Equitable relief	Strong	Colo. Rev. Stat. § 6-1-110(a)
b. Restitution for	Strong	Colo. Rev. Stat. § 6-1-110(a)
consumers		
c. Civil penalty amount for	Weak	Colo. Rev. Stat. § 6-1-112(1): \$2000 per
initial violations		violation, capped at \$100,000

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Strong	The Colorado Supreme Court has held made clear 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. However, <i>Hall v. Walter</i> , 969 P.2d 224 (Colo. 1998), demonstrates that causation may be

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		established even if the injured party did not rely
		on the deceptive statements.
b. Does not require a	Weak	Rhino Linings USA, Inc. v. Rocky Mountain
showing of public interest		Rhino Lining, Inc., 62 P.3d 142 (Colo. 2003);
or public impact		Hall v. Walter, 969 P.2d 224 (Colo. 1998).
c. Does not require pre-suit	Strong	
notice to the defendant		
2. Available remedies		
a. Compensatory damages	Strong	Colo. Rev. Stat. § 6-1-113(2)(a)(I)
b. Multiple or punitive	Strong	Colo. Rev. Stat. § 6-1-113(2)(b), but this is an
damages	_	unusually narrow provision, allowing multiple
-		damages only if bad faith is shown by clear and
		convincing evidence
c. Attorney fees for	Strong	Colo. Rev. Stat. § 6-1-113(2)(b)
consumers		
3. Class actions		
a. Available under UDAP	Strong	Class actions under Colorado's consumer
statute and other law	Strong	protection statute are allowed. <i>See Mangone v.</i>
statute and other law		<i>U-Haul Intern., Inc.,</i> 7 P.3d 189 (Colo. App.
		1999) (overturning a lower court and allowing a
		class action with claims under Colorado's
		consumer protection statute to proceed).
		consumer protection statute to proceed).
4. Statute coverage		
a. Creditors and credit	Strong	Most of the statute's substantive prohibitions,
	_	Colo. Rev. Stat. § 6-1-105, apply to transactions
		involving any property, so would include credit
		transactions, 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 credit
		transactions. 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.
		This implies that creditors and credit are
		covered. In addition, the Colorado Court of
		Appeals found that a claim that a loan is covered
		under Colorado's consumer protection statute
		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</i> <i>Corp.</i> , 205 B.R. 272 (D. Colo. 1997). The exclusion at 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. of</i> <i>America</i> , 38 P.3d 47 (Colo. 2001), and is unlikely to be construed as a blanket exemption for creditors.
b. Insurance	Strong	Insurance is covered under Colorado's consumer protection statute. The Supreme Court of Colorado made clear in <i>Showpiece Homes Corp.</i> <i>v. Assurance Co. of America</i> , 38 P.3d 47 (Colo. 2001), that Colorado's UDAP statute (Colo. Rev. Stat. § 6-1-101) 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." <i>Showpiece Homes Corp. v. Assurance Co. of</i> <i>America</i> , 38 P.3d 47 (Colo. 2001). The court also noted that if this exception excluded insurers, it would also exclude nearly all businesses, since they are all regulated by some governmental agency.
c. Utilities	Strong	The 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 statute in <i>Showpiece Homes</i> <i>Corp. v. Assurance Co. of America</i> , 38 P.3d 47 (Colo. 2001). In <i>City of Aspen v. Kinder</i> <i>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. It declined to decide whether utilities are exempt

d. Doct colo poto (dobt	Strong	from the UDAP statute. In <i>Mountain States Tel.</i> <i>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 also 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	Post-sale acts appear to be covered under Colorado's consumer protection statute. In <i>Showpiece Homes Corp. v. Assurance Co. of</i> <i>America</i> , 38 P.3d 47 (Colo. 2001), the Colorado Supreme Court ruled that the UDAP statute applied to an insurer's post-sale unfair or bad faith 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.

CONNECTICUT

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Strong	Conn. Gen. Stat. § 42-110b(a)
or unconscionable acts		
b. Broadly prohibits	Strong	Conn. Gen. Stat.§ 42-110b(a)
deceptive acts		
c. Provides the state agency	Strong	Conn. Gen. Stat.§ 42-110b. State has adopted a
substantive rulemaking		number of regulations.
authority		
	1	
2. Lack of preconditions		
to public enforcement		
a. Allows public	Strong	
enforcement without		
requiring a showing of the		
defendant's intent or		
knowledge		
	1	
3. Available remedies		
	G.	
a. Equitable relief	Strong	Conn. Gen. Stat.§ 42-110d(d)
b. Restitution for	Strong	Conn. Gen. Stat.§ 42-110d(d), (e)
consumers		
c. Civil penalty amount for	Mixed	Conn. Gen. Stat.§ 42-110o(b): \$5000 per
initial violations		violation if willful

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Strong	<i>Hinchliffe v. American Motors Corporation</i> , 184 Conn. 607, 617, 440 A.2d 810 (1981) holds that the consumer need not prove reliance.
b. Does not require a showing of public interest or public impact	Strong	Conn. Gen. Stat.§ 42-110g(a)
c. Does not require pre-suit notice to the defendant	Strong	

2. Available remedies		
	<u> </u>	
a. Compensatory damages	Strong	Conn. Gen. Stat. § 42-110g(a)
b. 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).
c. Attorney fees for	Strong	Conn. Gen. Stat. § 110g(d)
consumers		
3. Class actions		
a. Available under UDAP statute and other law	Strong	Conn. Gen. Stat. § 42-110g(b)
	1	
4. Statute coverage		
a. Creditors and credit	Strong	Normand Josef Enterprises, Inc. v. Connecticut
1 7		<i>Nat. Bank</i> , 646 A.2d 1289 (Conn. 1994)
b. Insurance	Mixed	Mead v. Burns, 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, the UDAP statute cannot be used to
		challenge a practice that is not prohibited by the
		state unfair insurance practices statute.
c. Utilities	Strong	Nothing in the statute excludes utilities, nor do
	0	any decisions.
d. Post-sale acts (debt	Strong	Nothing in the statute excludes post-sale acts,
collection, repossession)		and a number of trial court decisions have
		applied the statute to post-sale acts. See Pabon
		v. Recko, 122 F. Supp. 2d 311 (D. Conn. 2000)
		(creditor's collection of its own debts is in trade
		or commerce); Wagner v. Am. Nat'l Educ. Corp.,
		1983 U.S. Dist. LEXIS 10287 (D. Conn. Dec.
		30, 1983) (referring to scope of FTC Act in
		finding that UDAP statute covers debt
e. Real estate	Strong	collection). Conn. Gen. Stat.§ 42-110a defines "trade" and
e. Real estate	Strong	"commerce" to include real property
		transactions.
	1	

DISTRICT OF COLUMBIA

D.C. Code §§ 28-3901 through 28-3913

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
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	Strong	Mayor has authority under D.C. Code § 28-3913. However, no rules have been adopted.
2. Lack of preconditions to public enforcement		
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Strong	See Fort Lincoln Civic Ass'n v. Fort Lincoln New Town Corp., 944 A.2d 1055 (D.C. 2008) (holding that intent is unnecessary).
3. Available remedies		
a. Equitable relief	Strong	D.C. Code § 28-3909(a) (Corporation Counsel, which is now the Attorney General's office). D.C. Code § 28-3905(i)(3) also gives this authority to the D.C. Dept. of Consumer & Regulatory Affairs, but it no longer has funding to perform this function.
b. Restitution for consumers	Strong	D.C. Code § 28-3909(a) (Corp. Counsel/AG). D.C. Code § 28-3905(i)(3) also gives this authority to the D.C. Dept. of Consumer & Regulatory Affairs, but it no longer has funding to perform this function.
c. Civil penalty amount for initial violations	Weak	D.C. Code § 28-3909(a) (\$1000 per violation) (Corp. Counsel/AG). D.C. Code § 28-3905(i)(3) also authorizes the Dept. of Consumer & Regulatory Affairs to recover \$1000 per violation, but it no longer has funding to perform this function.

CONSUMER ACCESS TO JUSTICE	COMMENTS
1. Lack of preconditions	

for a suit		
a. Does not require reliance	Strong	Case law appears to support the proposition that reliance is not required. Although it appears more as dicta, a district court noted that a 2000 amendment to D.C.'s UDAP statute "eliminates these requirements of injury in fact and causation." <i>Wells v. Allstate Ins. Co.</i> , 210 F.R.D. 1 (D.D.C. 2002). In <i>Snowder v. District of</i> <i>Columbia</i> , 949 A.2d 590, *9 n. 10 (D.C. 2008), the District's highest court held that a consumer can bring a claim on behalf of the general public even though she did not have standing to bring common law claims.
b. Does not require a showing of public interest or public impact	Strong	
c. Does not require pre-suit notice to the defendant	Strong	
2. Available remedies		
a. Compensatory damages	Strong	D.C. Code § 28-3905(k)(1)(A)
b. Multiple or punitive damages	Strong	D.C. Code § 28-3905(k)(1)(A). In addition, D.C. Code § 28-3905(k)(1)(C) authorizes punitive damages.
c. Attorney fees for consumers	Strong	D.C. Code § 28-3905(k)(1)(B)
3. Class actions		
a. Available under UDAP statute and other law	Strong	28-3905(k)(1), (k)(1)(E)
4. Statute coverage		
a. Creditors and credit	Strong	D.C. Code § 28-3901(a)(7)
b. Insurance	Strong	There is no exemption for insurance transactions in the statute, and in <i>Atwater v. District of</i> <i>Columbia Dept. of Consumer & Regulatory</i> <i>Affairs</i> , 566 A.2d 462 (D.C. 1989), D.C.'s highest court upheld the application of the statute to an insurance dispute.
c. Utilities	Strong	There is no exemption for utilities in the statute, and in <i>District Cablevision Ltd. Partnership v.</i> <i>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)	Strong	Post-sale acts appear to be covered under D.C.'s UDAP statute. In <i>Osbourne v. Capital City</i> <i>Mortg. Corp.</i> , 667 A.2d 1321 (D.C. 1995), the D.C. Court of Appeals reversed summary judgment for a mortgage company that had misrepresented the payoff amount on a loan.
e. Real estate	Strong	D.C. Code § 28-3901(a)(7). Note, however, that D.C. Code § 28-3903(c)(2) exempts "landlord- tenant relations."

DELAWARE

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Weak	
or unconscionable acts		
b. Broadly prohibits	Strong	Del. Code Ann. tit. 6, § 2513(a).
deceptive acts		
c. Provides the state agency	Weak	
substantive rulemaking		
authority		
2. Lack of preconditions		
to public enforcement		
a. Allows public	Strong	
enforcement without		
requiring a showing of the		
defendant's intent or		
knowledge		
3. Available remedies		
a. Equitable relief	Strong	Del. Code Ann. tit. 6, §§ 2522, 2523
b. Restitution for	Strong	Del. Code Ann. tit. 6, § 2523
consumers	_	
c. Civil penalty amount for	Strong	Del. Code Ann. tit. 6, § 2522(b) - up to \$10,000
initial violations		per violation if willful

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Strong	<i>Stephenson v. Capano Development, Inc.</i> , 462 A.2d 1069, 1074 (Del. 1983).
b. Does not require a showing of public interest or public impact	Strong	
c. Does not require pre- suit notice to the defendant	Strong	
2. Available remedies		

a. Compensatory damages	Strong	Del. Code Ann. tit. 6, § 2525 makes a private cause of action available. Even before the statute was amended to make the private cause of action explicit, the Delaware Supreme Court allowed consumers to bring suit for actual damages under it. <i>See Stephenson v.</i> <i>Capano Development, Inc.</i> , 462 A.2d 1069 (Del. 1983).
b. Multiple or punitive damages	Weak	
c. Attorney fees for consumers	Weak	
3. Class actions		
a. Available under UDAP statute and other law	Strong	Nothing in the statute prohibits class actions.
4. Statute coverage		
a. Creditors and credit	Undecided	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. Nothing in the wording of the private cause of action would exclude credit. However, Delaware courts have not yet ruled on the question whether credit is an intangible or service and whether it is "sold, leased, or advertised."
b. Insurance	Weak	Del. Code Ann. tit. 6, § 2513(b)
 c. Utilities d. Post-sale acts (debt collection, repossession) e. Real estate 	Weak Undecided Strong	 Del. Code Ann. tit. 6, § 2513(b)(3). 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 postsale acts, and one decision has so held. <i>Lony</i> v. <i>E.I. du Pont de Nemours and Co., Inc.</i>, 821 F. Supp. 956 (D. Del. 1993). However, several trial court decisions state that the statute does not apply to post-sale abuses: <i>Norman Gershman's Things to Wear, Inc. v. Mercedez-Benz of N. Am.</i>, 558 A.2d 1066 (Del. Super. Ct. 1989); Ayers v. Quillen, 2004 WL 1965866 (Del. Super. June 30, 2004). Del. Code Ann. tit. 6, § 2511(6) defines

"merchandise" to include real estate, and
nothing in the private cause of action section
limits this.

FLORIDA

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Strong	Fla. Stat. Ann. §§ 501.204 broadly prohibits both
or unconscionable acts		unfair and unconscionable acts.
b. Broadly prohibits	Strong	Fla. Stat. Ann. § 501.204
deceptive acts		
c. Provides the state agency	Strong	Fla. Stat. Ann. § 501.205. However, the state
substantive rulemaking		agency has repealed almost all of its rules.
authority		
	1	
2. Lack of preconditions		
to public enforcement		
a. Allows public	Strong	
enforcement without		
requiring a showing of the		
defendant's intent or		
knowledge		
	1	
3. Available remedies		
a. Equitable relief	Strong	Fla. Stat. Ann. § 501.207(1)(b)
b. Restitution for	Strong	Fla. Stat. Ann. § 501.207(1)(c)
consumers		
c. Civil penalty amount for	Strong	Fla. Stat. Ann. § § 501.2075 (\$10,000 per
initial violations		violation if willful)

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Mixed	Intermediate appellate decisions are mixed, but in the decision most on point, <i>Davis v</i> . <i>Powertel, Inc.</i> , 776 So.2d 971 (Fla. Dist. Ct. App. 2000), Florida's first district court of appeals held that reliance was not required. Florida's fourth and fifth appellate districts have distinguished <i>Davis</i> , however, and have questioned its reasoning, expressing concerns about "the principle of causation." <i>Philip</i>

b. Does not require a S	Strong	(Fla. Dist. Ct. App. 2006). See also Hutson v. Rexall Sundown, Inc., 837 So.2d 1090 (Fla. Dist. Ct. App. 2003).
showing of public interest or public impact	C	
c. Does not require pre- suit notice to the defendant	Strong	

2. Available remedies		
a. Compensatory damages	Strong	Fla. Stat. Ann. § 501.211(2)
b. Multiple or punitive damages	Weak	
c. 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,</i> <i>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</i> <i>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.
3. Class actions		
a. Available under UDAP statute and other law	Strong	See Latman v. Costa Cruise Lines, N.V. 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. Statute coverage		
a. Creditors and credit	Weak	Fla. Stat. Ann. § 501.212(4) exempts "[a]ny person or activity regulated under laws

		administered by (b) Banks and savings and loan associations regulated by [the state agency]; (c) Banks or savings and loan associations regulated by federal agencies." This language has been interpreted as a blanket exemption for banks. <i>Bankers Trust</i> <i>Co. v. Basciano</i> , 960 So.2d 773, 779 (Fla. Dist. Ct. App. 2007) (refusing to apply the state's UDAP proscriptions to a bank). While creditors other than banks and savings and loan associations do not fall within this exemption, the exclusion of banks and S&Ls is a significant limitation on the scope of the UDAP statute.
b. Insurance	Weak	Fla. Stat. Ann. § 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 Dept. of Insurance." This has been interpreted as a blanket exemption for insurers. <i>See e.g. International Brokerage & Surplus Lines, Inc. v. Liberty Mut. Ins</i> , 2007 WL 220172 (M.D. Fla. 2007); <i>LaPenna v.</i> <i>Government Employees Ins. Co.</i> , 2006 WL 3388454 (M.D. Fla. 2006).
c. Utilities	Weak	Fla. Stat. Ann. § 501.212(4) exempts "Any activity regulated under laws administered by the Florida Public Service Commission." Under Fla. Stat. § 350.111, this includes gas and electricity providers.
d. Post-sale acts (debt collection, repossession)	Mixed	Florida courts have interpreted the state's UDAP statute inconsistently when it comes to post-sale activities. A Florida appellate court found that harassing collection efforts "fell within the statute's broad definition of 'trade or commerce.'" <i>Schauer v. General Motors</i> <i>Acceptance Corp.</i> , 819 So.2d 809, 812 (Fla. Dist. Ct. App. 2002); <i>see also Williams v.</i> <i>Edelman</i> , 408 F. Supp. 2d 1261 (S.D. Fla. 2005). However, a different appellate court held that 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).
e. Real estate	Mixed	Fla. Stat. Ann. § 501.203(8) defines "trade or

deception.

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Strong	Ga. Code § 10-1-393
or unconscionable acts		
b. Broadly prohibits	Strong	Ga. Code § 10-1-393(a)
deceptive acts		
c. Provides the state agency	Strong	Ga. Code § 10-1-394 (and state has adopted
substantive rulemaking		several)
authority		
2. Lack of preconditions		
to public enforcement		
a. Allows public	Strong	
enforcement without		
requiring a showing of the		
defendant's intent or		
knowledge		
3. Available remedies		
5. Available remetiles		
a. Equitable relief	Strong	Ga. Code § 10-1-397(a)(2)(A)
b. Restitution for	Strong	Ga. Code § 10-1-397(a)(2)(C)
consumers		
c. Civil penalty amount for	Mixed	Ga. Code § 10-1-397(a)(2)(B) (\$5000 per
initial violations		violation)

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Weak	The Georgia Court of Appeals in <i>Zeeman v.</i> <i>Black</i> , 156 Ga. App. 82, 273 S.E.2d 910 (Ga. App. 1980), held that reliance is required, based on the statute's language calling for the plaintiff to write a demand for relief and describe "the unfair or deceptive practice relied upon." Ga Code Ann. § 10-1-399. <i>Zeeman</i> was quoted with favor by the

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		Supreme Court of Georgia in <i>Tiismann v</i> .
		Linda Martin Homes Corp., 637 S.E.2d 14
		(Ga. 2006).
b. Does not require a	Weak	Georgia intermediate appellate courts, <i>e.g.</i>
showing of public interest		Pryor v. CCEC, Inc., 571 S.E.2d 454 (Ga.
or public impact		App. 2002) and Borden v. Pope Jeep-Eagle,
		Inc., 407 S.E.2d 128 (Ga. App. 1991), have
		imposed a public interest requirement.
c. Does not require pre-	Weak	Ga. Code § 10-1-399(b).
suit notice to the defendant	vv curk	
2. Available remedies		
2. Available remetics		
a. Compensatory damages	Strong	Ga. Code § 10-1-399(a)
b. Multiple or punitive	Strong	Ga. Code § 10-1-399(c): treble damages for
damages		willful violations. This section also authorizes
		punitive damages.
c. Attorney fees for	Mixed	Ga. Code § 10-1-399(d). (However, Georgia's
consumers		rule is weaker than many states' in that it
		mandates fees to the defendant if the consumer
		continues with the case after rejecting what the
		court determines to be a reasonable settlement
		offer).
3. Class actions		
a. Available under UDAP	Weak	Ga. Code § 10-1-399(a) authorizes consumers
statute and other law		to sue only individually, not in a
		"representative capacity."
4. Statute coverage		
a. Creditors and credit	Undecided	Ga. Code § 10-1-393 broadly prohibits unfair
		and deceptive practices "in the conduct of" a
		consumer transaction, which is defined by Ga.
		Code § 10-1-392(a)(3) as "the sale, purchase,
		lease, or rental of goods, services, or property,
		real or personal, primarily for personal,
		family, or household purposes." One court,
		Garner v. Academy Collection Service, Inc.,
		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, i.e. the extension of
		credit. On the other hand, Ga. Code § 10-1-
		396(1) exempts "acts or transactions
		specifically authorized under laws
1	1	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</i> <i>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. <i>See, e.g.</i> <i>In re Taylor,</i> 292 B.R. 434 (Bkrtcy. N.D. Ga. 2002).
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b. Insurance	Weak	<i>See 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 § 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," courts in a number of other states have construed similar language narrowly.
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</i> <i>v. Academy Collection Service, Inc.</i> , 2005 WL 643680 (N.D. Ga. 2005), one court found that collection activities were covered under the statues' UDAP statute "because they involved the sale and purchase of a servicethe extension of credit and the associated administration and collection of the debtfor 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.

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair or unconscionable acts	Strong	Haw. Rev. Stat. § 480-2(A)
b. Broadly prohibits deceptive acts	Strong	Haw. Rev. Stat. § 480-2(A)
c. Provides the state agency substantive rulemaking authority	Strong	Haw. Rev. Stat. § 487-5(5). State has adopted several substantive rules.
2. Lack of preconditions to public enforcement		
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Strong	
	•	-
3. Available remedies		
a. Equitable relief	Strong	Haw. Rev. Stat. § 480-15
b. Restitution for consumers	Strong	Haw. Rev. Stat. § 487-14(a)
c. Civil penalty amount for initial violations	Strong	Haw. Rev. Stat. § 480-3.1 (\$500 to \$10,000 per violation)

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Undecided	<i>Courbat v. Dahana Ranch, Inc.</i> , 141 P.3d 427, 435 (Hawai'i, 2006), held that the test for a UDAP claim "is an objective one, turning on whether the act or omission 'is likely to mislead consumers." It held that the test for whether a practice is deceptive is whether it is material and is likely to mislead consumers acting reasonably under the circumstances. This decision suggests that reliance need not be shown, but the issue has not been

		specifically addressed.
b. Does not require a showing of public interest or public impact	Strong	Haw. Rev. Stat. § 480-2(c)
c. Does not require pre- suit notice to the defendant	Strong	
2. Available remedies		
a. Compensatory damages	Strong	Haw. Rev. Stat. § 480-13(a)(1), (b)(1)
b. Multiple or punitive damages	Strong	Haw. Rev. Stat. § 480-13(a)(1), (b)(1)
c. Attorney fees for consumers	Strong	Haw. Rev. Stat. § 480-13(a)(1), (b)(1)
3. Class actions		
a. Available under UDAP statute and other law	Strong	Haw. Rev. Stat. § 480-13(c)
4. Statute coverage		
a. Creditors and credit	Strong	Haw. Rev. Stat. § 480-13(b) allows suit only by a "consumer," defined broadly at Haw. Rev. Stat. § 480-1 as "a natural person who, primarily for personal, family, or household purposes, purchases, attempts to purchase, or is solicited to purchase goods or services or who commits money, property, or services in a personal investment." The private cause of action at Haw. Rev. Stat. § 480-13 is not limited in a way that could be construed to exclude credit. In <i>Hawaii Community Federal</i> <i>Credit Union v. Keka</i> , 11 P.3d 1 (Hawai'i 2000), the Hawaii Supreme Court held that "(1) a loan extended by a financial institution is activity involving 'conduct of any trade and commerce' and (2) loan borrowers are 'consumers' within the meaning of" the state UDAP statute.
b. Insurance	Strong	Insurance appears to be covered under Hawaii's UDAP statute. In <i>Jenkins v.</i> <i>Commonwealth Land Title Ins. Co.</i> , 95 F.3d 791 (C.A.9 (Hawai'i) 1996), the Ninth Circuit held that Hawaii's UDAP statute was not preempted by the state's insurance code. The court noted that in <i>Gonsalves v. First</i> <i>Insurance Co. of Hawaii, Ltd.,</i> 516 P.2d 720

		(Hawai'i 1973), the Hawaii Supreme Court upheld a ruling of summary judgment for defendants, but made no mention of preemption. The <i>Jenkins</i> court thus gave strong disapproval to <i>Genovia v. Jackson</i> <i>National Life Insurance Co.</i> , 795 F. Supp. 1036 (D.Haw.1992), which held that Haw. Rev. Stat. § 480-2 was preempted by the Hawaii insurance code. <i>See also Donaldson v.</i> <i>Liberty Mut. Ins. Co.</i> , 947 F. Supp. 429 (D.Hawai'i,1996) (predicting that the Hawaii Supreme Court would allow a third-party beneficiary to assert a UDAP claim against an insurer).
c. Utilities	Strong	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 but there is no reason to think that it would not include post-sale acts, and Hawaii courts have applied the statute to post-sale acts such as debt collection. <i>See Wiginton v. Pacific Credit Corp.</i> , 634 P.2d 111 (Hawaii App. 1981) (upholding a trial court's injunction imposed against a debt collection agency, but reversing an award of summary judgment for the plaintiff, finding there were material issues of fact to be determined). <i>See also Ai v. Frank Huff</i> <i>Agency, Ltd.</i> , 607 P.2d 1304 (Hawaii 1980) (violation of debt collection agency law is per se UDAP claim); <i>King v. International Data</i> <i>Services</i> , 2002 WL 32345923 (D.Hawai'i 2002) (denying plaintiff's motion for summary judgment on a UDAP claim against a debt collector, but allowing the issue to go to trial).
e. Real estate	Strong	Real estate is covered under Hawaii's UDAP statute. In <i>Hawaii Community Federal Credit</i> <i>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" (quoting <i>Cieri v. Leticia Query Realty, Inc.</i> , 905 P.2d 29 (Hawai'i 1995)).

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

	COMMENTS
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).
Strong	Idaho Code § 48-603(17) broadly prohibits deception.
Strong	Idaho Code § 48-604(2), and Idaho has adopted a number of regulations.
1	
Strong	
Strong	Idaho Code § 48-606(1)(b)
Strong	Idaho Code §§ 48-606(1)(c), 48-607(2)
Mixed	Idaho Code § 48-606(1)(e) (up to \$5000 per violation)
	Strong Strong Strong Strong Strong

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
	Undecided	Ideba courts have not yet reached this
a. Does not require reliance	Undecided	Idaho courts have not yet reached this question.
b. Does not require a showing of public interest or public impact	Strong	
c. Does not require pre-	Strong	

suit notice to the defendant		
2. Available remedies		
a. Compensatory damages	Strong	Idaho Code § 48-608(1)
b. 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.
c. Attorney fees for	Strong	Idaho Code § 48-608(4)
consumers		
3. Class actions		
a. Available under UDAP	Strong	Class actions are specifically authorized by
statute and other law	Strong	Idaho Code § 48-608(1).
4. Statute coverage		
a. Creditors and credit	Undecided	In <i>Idaho First Nat. Bank v. Wells</i> , 596 P.2d 429 (Idaho 1979), the Supreme Court of Idaho 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 because they are not covered by the FTC Act. However, after this decision was issued the Idaho legislature added an unconscionability prohibition, Idaho Code § 48-603(18), that specifically exempts regulated lenders. If lending by regulated lenders were not generally subject to the statute, this exemption would be meaningless. Idaho Code § 48-605(1) excludes "actions or transactions permitted under laws administered by a regulatory body or officer," but Idaho Code § 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." For all of these reasons, it is likely that credit transactions are covered except when some specific practice is

b. Insurance	Weak	explicitly approved by a regulatory body, but Idaho courts have not yet addressed this question. Idaho Code § 48-605(3). <i>See Irwin Rogers</i> <i>Agency, Inc. v. Murphy</i> , 833 P.2d 128 (Idaho
c. Utilities	Undecided	1992) Idaho Code § 48-605(1) excludes "actions or transactions permitted under laws administered by" the state public utility commission. Idaho Code § 48-602(8) defines "actions or transactions permitted under laws administered by a regulatory body or officer" 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." In <i>Yellowpine Water User's Ass'n</i> <i>v. Imel</i> , 670 P.2d 54 (Idaho 1983), the Supreme Court of Idaho 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 § 48- 605(1) as excluding utility providers altogether, it would have answered that threshold question and denied the claim on that ground. However, Idaho courts have not yet directly construed this exemption.
d. Post-sale acts (debt collection, repossession)	Strong	<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.

ILLINOIS

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Strong	815 Ill. Comp. Stat. Ann. § 505/2
or unconscionable acts		
b. Broadly prohibits	Strong	815 Ill. Comp. Stat. Ann. § 505/2
deceptive acts		
c. Provides the state agency	Strong	815 Ill. Comp. Stat. Ann. § 505/4. Illinois has
substantive rulemaking		adopted a number of regulations: Ill. Admin.
authority		Code tit. 14 § 460.10 et seq.
	1	
2. Lack of preconditions		
to public enforcement		
a. Allows public	Strong	
enforcement without		
requiring a showing of the		
defendant's intent or		
knowledge		
3. Available remedies		
5. Available remeules		
a. Equitable relief	Strong	815 Ill. Comp. Stat. Ann. § 505/7(a)
b. Restitution for	Strong	815 Ill. Comp. Stat. Ann. § 505/7(a)
consumers		_
c. Civil penalty amount for	Strong	815 Ill. Comp. Stat. Ann. § 505/7(b) – up to
initial violations		\$50,000; up to \$50,000 per violation if intent to
		defraud is shown

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Strong	815 Ill. Comp. Stat. Ann. § 505/2 requires a showing that the defendant acted with "intent that others rely," 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).
b. Does not require a	Strong	815 Ill. Comp. Stat. Ann. § 505/10(a) required a

showing of public interest or public impact		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.2fd 752 (Ill. 2003).
c. Does not require pre-suit notice to the defendant	Strong	
2. Available remedies		
a. Compensatory damages	Strong	815 Ill. Comp. Stat. Ann. § 505/10a(c)
b. Multiple or punitive damages	Weak	
c. 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.
3. Class actions		
a. Available under UDAP statute and other law	Strong	
4. Statute coverage		
a. Creditors and credit	Mixed	815 III. Comp. Stat. Ann. § 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 clearly encompasses extensions of credit. In addition, 815 III. Comp. Stat. Ann. §§ 505/2E, 505/2F, 505/2K, and 505/2T all place specific restrictions on credit transactions. If the statute did not cover credit transactions, these would be meaningless. However, another issue is the interpretation of 815 III. Comp. Stat. Ann. § 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 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 (III. 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.</i> <i>Gen. Fin., Inc.</i> , 768 N.E.2d 60 (Ill. App. 2002). However, Illinois courts have significantly reduced the applicability of the UDAP statute to credit by adopting an unusually broad view of the effect of the Truth in Lending Act, with some decisions holding that it immunizes lenders from UDAP liability for a wide range of deception and non-disclosure. <i>See, e.g., Najieb v. William</i> <i>Chrysler-Plymouth</i> , 2002 WL 31906466 (N.D. Ill. 2002). In addition, <i>Zekman v. Direct</i> <i>American Marketers, Inc.</i> , 659 N.E.2d 853 (Ill. 1998), holds that knowingly accepting the fruit of a seller's fraud is insufficient to impose liability under the state UDAP upon actors such as creditors.
b. Insurance	Strong	Insurance fits into the broad definition of "trade" and "commerce" at 815 III. Comp. Stat. Ann. § 505/1(f). The only question is the general exemption at 815 III. Comp. Stat. Ann. § 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 (III. 2005). In addition, 815 III. Comp. Stat. Ann. § 505/2QQ imposes specific restrictions on insurance transactions. If the statute did not cover insurance transactions, these restrictions would be meaningless. Finally, 815 III. Comp. Stat. Ann. § 505/10b(6) exempts certain false communications by insurance producers. If insurance transactions were generally exempt, this exemption would not be necessary. The UDAP statute has been applied to insurance practices in many cases, such as <i>Golf v.</i> <i>Henderson</i> , 2007 WL 2445274 III. App. 2007).
c. Utilities	Strong	Utility service fits into the broad definition of "trade" and "commerce" at 815 Ill. Comp. Stat. Ann. § 505/1(f), which includes "distribution of any services." In addition, 815 Ill. Comp. Stat. Ann. §§ 505/2DD, 5052II, and 505/2VV place

		special restrictions on telecommunications transactions, and §§ 505/2EE, 505/2FF, 505/2GG, and 505/2HH impose special restrictions on electricity providers – all of which would be meaningless if these providers were not covered. The only question is the general exemption at 815 Ill. Comp. Stat. Ann. § 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 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, such as <i>Flournoy v. Ameritech</i> , 814 N.E.2d 585 (Ill. App. 2004); <i>Wernikoff v. RCN Telecom</i> <i>Services of Illinois, Inc.</i> , 791 N.E.2d 1195 (Ill. App. 2003); <i>Crain v. Lucent Technologies, Inc.</i> , 739 N.E.2d 639 (Ill. App. 2000).
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, and the Illinois Supreme Court held in <i>People ex rel. Daley v.</i> <i>Datacom Systems Corp.</i> ,585 N.E.2d 51 (Ill. 1991) that collection of a debt fell within the definition. 815 Ill. Comp. Stat. Ann. §§ 505/2H and 505/2I explicitly prohibit certain collection practices.
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. However, 815 Ill. Comp. Stat. Ann. §§ 505/10b(4) provides that the statute does not apply to "(4) The communication of any false, misleading or deceptive information, provided by the seller of real estate located in Illinois, by a real estate salesman or broker licensed under [the state real estate licensing law], unless the salesman or

broker knows of the false, misleading or
, 6
deceptive character of such information." This
language on its face only immunizes real estate
agents and brokers; the reference to information
"provided by the seller" does not create an
independent immunity for sellers of real estate,
but limits the immunity of real estate agents and
brokers to instances when they are passing on
information provided by the seller. However, an
Illinois appellate court has interpreted the
language more broadly to immunize the seller of
real estate as well: Strauss v. Cruz, 631 N.E.2d
468 (Ill. App. 1994). However, two courts have
recognized that <i>Strauss</i> misread the statute:
Scarsdale Builders, Inc. v. Ryland Group, Inc.,
911 F. Supp. 337, 339 n. 6 (N.D. Ill. 1996);
Kleczek v. Jorgensen, 767 N.E.2d 913, 918 (III.
App. 2002).

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Strong	Ind. Code § 24-5-0.5-10
or unconscionable acts		
b. Broadly prohibits	Weak	
deceptive acts		
c. Provides the state	Weak	
agency substantive		
rulemaking authority		
		1
2. Lack of preconditions		
to public enforcement		
a. Allows public	Weak	Ind. Code § 24-5-0.5-3 requires intent or
enforcement without		knowledge for most substantive violations.
requiring a showing of the		
defendant's intent or		
knowledge		
		T
3. Available remedies		
a. Equitable relief	Strong	Ind. Code § 24-5-0.5-4(c)(1)
b. Restitution for	Strong	Ind. Code § 24-5-0.5-4(c)(2)
consumers		
c. Civil penalty amount for	Mixed	Ind. Code § 24-5-0.5-4(g) (\$5000 per
initial violations		violation if knowing; see also 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).

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Weak	Ind. Code § 24-5-0.5-4 requires reliance.
b. Does not require a showing of public interest or public impact	Strong	
c. Does not require pre-	Weak	Pre-suit notice is required by Ind. Code §§ 24-

deffaud of mislead).	suit notice to the defendant	5-0.5-5 and 24-5-0.5-2(a)(5)-(8) (with exception for deceptive acts done as part of scheme, artifice, or device with intent to defraud or mislead).
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a. Compensatory damagesStrongInd. Code § 24-5-0.5-4(1)b. Multiple or punitive damagesStrongInd. Code § 24-5-0.5-4(1)c. Attorney fees for consumersUndecidedInd. 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 Krautsack v. Anderson, 861 N.E.2d 633, 645 (Ill. 2006), as allowing a fee award against the consumer only if the consumer acted in bad faith.	2. Available remedies		
damagesc. Attorney fees for consumersUndecidedInd. 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 Krautsack v. Anderson, 861 N.E.2d 633, 645 (Ill. 2006), as allowing a fee award against the consumer	a. Compensatory damages	Strong	Ind. Code § 24-5-0.5-4(1)
c. 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.</i> <i>Anderson</i> , 861 N.E.2d 633, 645 (Ill. 2006), as allowing a fee award against the consumer	1 1	Strong	Ind. Code § 24-5-0.5-4(1)
	c. Attorney fees for	Undecided	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.</i> <i>Anderson</i> , 861 N.E.2d 633, 645 (Ill. 2006), as allowing a fee award against the consumer

3. Class actions		
a. Available under UDAP	Strong	Ind. Code § § 24-5-0.5-4
statute and other law	_	

4. Statute coverage		
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 might 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 § 24-5-0.5-6 explicitly excludes 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	There is no statutory language that excludes post-sale acts, and there are no cases saying they are excluded.
e. Real estate	Weak	Real estate transactions are included in the definition of "consumer transaction" at Ind. Code § 24-5-0.5-2(a)(1), but Ind. Code § 24- 5-0.5-4(a) denies the consumer a private cause of action in real property transactions.

IOWA Iowa Code §§ 714.16 through 714.16A

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair or unconscionable acts	Mixed	Iowa Code §§ 714.16(2)(a), (1)(n) broadly prohibits unfair acts, but only the Attorney General, not consumers, can enforce this prohibition.
b. Broadly prohibits deceptive acts	Mixed	Iowa Code § 714.16(2)(a), (1)(f) broadly prohibits deceptive acts, but only the Attorney General, not 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.
	1	I
2. Lack of preconditions to public enforcement		
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Strong	Iowa Code § 714.16(7)
3. Available remedies		
a. Equitable relief	Strong	Iowa Code § 714.16(7)
b. Restitution for consumers	Strong	Iowa Code § 714.16(7)
c. 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.

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Weak	Iowa does not give consumers the right to enforce the state UDAP statute at all, regardless of reliance.
b. Does not require a	Weak	Iowa does not give consumers the right to

	enforce the state UDAP statute at all, regardless
Weelr	of public impact.
weak	Iowa does not give consumers the right to
	enforce the state UDAP statute at all, regardless
	of pre-suit notice.
Weak	Iowa does not give consumers any remedies
	under its UDAP statute.
Weak	Iowa does not give consumers any remedies
	under its UDAP statute.
Weak	Iowa does not give consumers any remedies
	under its UDAP statute.
Weak	Iowa does not give consumers any remedies
	under its UDAP statute.
•	
Strong	Nothing in the statute excludes credit.
Strong	Nothing in the statute excludes insurance.
Strong	Nothing in the statute excludes utilities.
Strong	See State ex rel. Miller v. Cutty's Des Moines
	Camping Club, Inc., 694 N.W.2d 518 (Iowa
	2005).
Strong	§ 714.16(1)(i) defines "merchandise" to include
Ŭ	real estate.
	Weak Weak Weak Strong Strong Strong Strong

KANSAS

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Strong	Kan. Stat. § 50-627
or unconscionable acts		
b. Broadly prohibits	Strong	Kan. Stat. § 50-626(a)
deceptive acts		
c. Provides the state agency	Weak	Kan. Stat. § 50-630 only allows procedural rules.
substantive rulemaking		
authority		
	1	
2. Lack of preconditions		
to public enforcement		
a. Allows public	Mixed	While almost all of the specific prohibitions at §
enforcement without		50-626(b) require intent or knowledge, the
requiring a showing of the		general prohibition of deceptive acts and
defendant's intent or		practices at Kan. Stat. § 50-626(a) does not.
knowledge		
	1	
3. Available remedies		
a. Equitable relief	Strong	Kan. Stat. § 50-632(a)(2)
b. Restitution for	Strong	Kan. Stat. § 50-632(a)(3), (c)(2)
consumers		
c. Civil penalty amount for	Strong	Kan. Stat. § 50-636 – up to \$10,000 per
initial violations		violation.

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Strong	Kan. Stat. § 50-626(b)(1) says deceptive acts are a violation "whether or not any consumer has in fact been misled." <i>McLellan v. Raines</i> , 2006 WL 851394 (Kan. App. Mar. 31, 2006), says reliance is not required but is a relevant factor when the court determines whether the consumer is "aggrieved." An earlier decision in the same case, <i>Cole v. Hewlett Packard Co.</i> , 2004 WL 376471 (Kan. App. Feb. 27, 2004), also holds

		that reliance is not required.
b. Does not require a showing of public interest or public impact	Strong	
c. Does not require pre-suit notice to the defendant	Strong	
2. Available remedies		
a. Compensatory damages	Strong	Kan. Stat. § 50-634(b), (c)
b. Multiple or punitive damages	Weak	
c. Attorney fees for consumers	Strong	Kan. Stat. § 50-634(e)
3. Class actions		
a. Available under UDAP statute and other law	Strong	Kan. Stat. § 50-634(c), (d)
4. Statute coverage		
a. Creditors and credit	Strong	Home mortgage loans are considered consumer transactions under Kan. Stat. § 50-624(c). <i>See</i> <i>State ex rel. Stephan v. Brotherhood Bank and</i> <i>Trust Co.</i> , 649 P.2d 419, 422 (Kan. App. 1982). Kan. Stat. § 50-624(j) excludes banks and other regulated lending institutions, but only as to their disposition of repossessed collateral.
b. Insurance	Weak	Kan. Stat. § 50-624(c) excludes insurance contracts regulated under state law from the definition of consumer transaction.
c. Utilities	Strong	Although there are no decisions on point, nothing in the statute excludes utilities.
d. Post-sale acts (debt collection, repossession)	Strong	Kan. Stat. § 50-624(j) defines "supplier" to include those who enforce consumer transactions. Also, Kan. Stat. § 50-627(a) provides that an unconscionable act is a violation whether it occurs before, during, or after the transaction.
e. Real estate	Strong	Kan. Stat. § 50-624(c) and (h) define "consumer transaction" to include real property transactions.

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Strong	Ky. Rev. Stat. § 367.170
or unconscionable acts		
b. Broadly prohibits	Strong	Ky. Rev. Stat. § 367.170
deceptive acts		
c. Provides the state agency	Weak	Ky. Rev. Stat. § 15.180 gives the Attorney
substantive rulemaking		General authority to issue "regulations which
authority		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. Lack of preconditions		
to public enforcement		
a. Allows public	Strong	
enforcement without	Strong	
requiring a showing of the		
defendant's intent or		
knowledge		
3. Available remedies		
a. Equitable relief	Strong	Ky. Rev. Stat. § 367.190
b. Restitution for	Strong	Ky. Rev. Stat. § 367.200
consumers		
c. Civil penalty amount for	Weak	Ky. Rev. Stat. § 367.990 (up to \$2000 per
initial violations		violation if willful)

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions		
for a suit		
a. Does not require	Undecided	Kentucky courts have not yet addressed the
reliance		question whether reliance is required. In
		Telcom Directories, Inc. v. Commonwealth ex
		rel. Cowan, 833 S.W.2d 848, 850 (Ky. App.

		1991), the court held that it was not necessary
		for the state to prove actual deception, but courts have not yet addressed the question in
1.5	<u> </u>	cases brought by consumers.
b. Does not require a showing of public interest or public impact	Strong	
c. Does not require pre- suit notice to the defendant	Strong	
2. Available remedies		
a. Compensatory damages	Strong	Ky. Rev. Stat. § 367.220(1)
b. 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").
c. 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.</i> <i>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.
2 Class a stians		
3. Class actions a. Available under UDAP statute and other law	Strong	Nothing in the statute prohibits class actions, and they are allowed under the general rules of court in Kentucky.
4. Statute coverage	~	
a. Creditors and credit	Strong	Trade or commerce is broadly defined by Ky. Rev. Stat. § 367.110 and would 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 addition, one section of Kentucky's consumer protection statute discusses assignees of rights in consumer credit transactions, a good indication that at least these creditors are subject to the statute. Ky. Rev. Stat. § 367.610. Additionally, in <i>Stafford</i>

		v. Cross Country Bank, 262 F. Supp. 2d 776 (W.D. Ky. 2003), a federal court found that the extension of credit would likely be held to be a "service" under Kentucky's consumer protection statute; the court denied the defendant's motion for summary judgment on a UDAP claim against a bank. See also Hamilton v. York, 987 F. Supp. 953 (E.D. Ky. 1997) (refusing to dismiss claims against a check cashing company under Kentucky's consumer protection statute).
b. Insurance	Mixed	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). However, in <i>Adams v. Westfield Ins. Co.</i> , 2005 WL 3006992 (W.D. Ky. 2005), a federal court limited the court's ruling to cases where misrepresentations are made regarding the policy itself, not claims setlement practices. Although <i>Adams</i> demonstrates some negative treatment, it is not controlling authority in Kentucky.
c. Utilities	Strong	Trade or commerce is broadly defined by Ky. Rev. Stat. § 367.110 to include "any services." Although Kentucky courts have not addressed the issue, there appears to be no basis in the statute for excluding utility service.
d. Post-sale acts (debt collection, repossession)	Strong	Although there is not yet a definitive ruling, in <i>Hamilton v. York</i> , 987 F. Supp 953, 958 (E.D. Ky. 1997), a federal district court applied the UDAP statute to false statements made in an attempt to collect a debt.
e. Real estate	Undecided	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." One federal court decision, <i>Aud v.</i> <i>Ill. Central R. Co.</i> , 955 F. Supp. 757 (W.D. Ky. 1997), holds that this language does not encompass real estate, but federal courts cannot make authoritative interpretations of state law and this language has been interpreted in certain other states to include real estate transactions. In addition, the

Kentucky Court of Appeals, in <i>Craig v. Keene</i> , 32 S.W.3d 90 (Ky. App. 2000), held that the state's consumer protection statute does not apply to "single real estate transactions,"
which would narrows the scope of any
coverage of real estate.

LOUISIANA

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Strong	La. Stat. Ann. § 51:1405(A) (unfair acts or
or unconscionable acts		practices)
b. Broadly prohibits	Strong	La. Stat. Ann. § 51:1405(A)
deceptive acts		
c. Provides the state agency	Strong	La. Stat. Ann. § 51:1405(B). The state has
substantive rulemaking		adopted a number of regulations.
authority		
	•	
2. Lack of preconditions		
to public enforcement		
a. Allows public	Strong	
enforcement without		
requiring a showing of the		
defendant's intent or		
knowledge		
	1	
3. Available remedies		
a. Equitable relief	Strong	La. Stat. Ann. § 51:1407(A)
b. Restitution for	Strong	La. Stat. Ann. § 51:1408(A)
consumers		
c. Civil penalty amount for	Mixed	La. Stat. Ann. § 51:1407(B) (up to \$5000 per
initial violations		violation if the act is done with intent to defraud)

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Undecided	Louisiana courts have not reached the question whether reliance is required.
b. Does not require a showing of public interest or public impact	Strong	
c. Does not require pre- suit notice to the defendant	Strong	
2. Available remedies		

a. Compensatory damages	Strong	La. Stat. Ann. § 51:1409(A)
b. Multiple or punitive damages	Strong	La. Stat. Ann. § 51:1409(A) if knowing violation after being put on notice by Attorney General
c. Attorney fees for consumers	Strong	La. Stat. Ann. § 51:1409(A)
3. Class actions		
a. Available under UDAP statute and other law	Weak	La. Stat. Ann. § 51:1409 disallows suit in representative capacity.
4. Statute coverage		
a. Creditors and credit	Weak	While the statute may cover some activities of creditors, La. Stat. Ann. § 51:1406(1) provides a very broad exemption for most creditors.
b. Insurance	Weak	La. Stat. Ann. § 51:1406(1) exempts "actions or transactions subject to the jurisdiction of the insurance commissioner." Most Louisiana courts have interpreted this language as a broad exclusion of insurers, regardless of whether they are engaging in deceptive acts. <i>See Phillips v. Patterson Ins. Co.</i> , 813 So.2d 1191 (La. App. 2002) (auto insurer not covered under Louisiana's UDAP statute); <i>Southern General Agency, Inc. v. Safeway Ins.</i> <i>Co. of Louisiana</i> , 769 So.2d 606 (La. App. 2000) (insurer exempted from UDAP claim because subject to jurisdiction of insurance commissioner); <i>LeMarie v. Lone Star Life Ins.</i> <i>Co.</i> , 2000 WL 739277 (E.D. La. 2000) (dismissing claim because "[t]he Insurance Code contains specific regulations dealing with deceptive and unfair trade practices of insurance companies").
c. Utilities	Weak	La. 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." Although Louisiana courts have not ruled on coverage of utility companies, they have broadly construed similar language exempting insurers.
d. Post-sale acts (debt collection, repossession)	Strong	Wrongful repossession appears to be covered. See Slayton v. Davis, 901 So.2d 1246 (La. App. 2005) (upholding a finding of unfair act

	2	where defendant wrongfully repossessed plaintiff's car, and thus awarding attorney's fees); <i>Pelican Point Operations, L.L.C. v.</i> <i>Carroll Childers Co.</i> , 807 So.2d 1171 (La. App. 2002) (upholding the award of attorney's fees where defendant wrongfully repossessed plaintiff's property); <i>Bryant v. Sears</i> <i>Consumer Financial Corp.</i> , 617 So.2d 1191 (La. App. 1993) (affirming that wrongful repossession is covered under Louisiana's UDAP statute). Since courts have held that the statute applies to wrongful repossession, they are likely to apply it to other post-sale collection practices as well.
e. Real estate	Strong	La. Stat. Ann. § 51:1402 broadly defines "trade or commerce" so that it covers real estate transactions.

MAINE

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Strong	Me. Rev. Stat. Ann. tit. 5 § 207
or unconscionable acts		
b. Broadly prohibits	Strong	Me. Rev. Stat. Ann. tit. 5 § 207
deceptive acts		
c. Provides the state agency	Strong	Me. Rev. Stat. Ann. tit. 5 § 207(2). The state has
substantive rulemaking		adopted several regulations.
authority		
2. Lack of preconditions		
to public enforcement		
a. Allows public	Strong	
enforcement without		
requiring a showing of the		
defendant's intent or		
knowledge		
		l
3. Available remedies		
a. Equitable relief	Strong	Me. Rev. Stat. Ann. tit. 5 § 209
b. Restitution for	Weak	Me. Rev. Stat. Ann. tit. 5 § 209
consumers		
c. Civil penalty amount for	Strong	Me. Rev. Stat. Ann. tit. 5 § 209 (up to \$10,000
initial violations		per violation if intentional).

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. 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</i> <i>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."" <i>Tungate</i> at 797. In contrast, in <i>GxG Management, LLC v. Young</i> <i>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</i> <i>Management</i> decision is entitled to little weight. However, the issue remains unresolved in Maine.
b. Does not require a showing of public interest or public impact	Strong	
c. Does not require pre- suit notice to the defendant	Weak	Me. Rev. Stat. Ann. tit. 5 § 213(1-A).
2. Available remedies		
a. Compensatory damagesb. Multiple or punitive damages	Strong Weak	Me. Rev. Stat. Ann. tit. 5 § 213(1)
c. Attorney fees for consumers	Strong	Me. Rev. Stat. Ann. tit. 5 § 213(2)
3 Class actions		
3. Class actions a. Available under UDAP statute and other law	Strong	See Oceanside at Pine Point Condominium Owners Ass'n v. Peachtree Doors, Inc. 659 A.2d 267 (Me. 1995) (reversing a lower court's award of summary judgment on a UDAP class action claim).
4. Statute coverage		
a. Creditors and credit	Strong	Me. Rev. Stat. Ann. tit. 5 § 206(3) defines

		·// • • • • • • •
b Insurance	Strong	"trade" and "commerce" to include "distribution of any property and any other article, commodity or thing of value." This broad language clearly encompasses credit. Me. Rev. Stat. Ann. tit. 5 § 208, as amended in 2007, now exempts: "Transactions or actions otherwise permitted under laws as administered by any regulatory board or officer acting under statutory authority of the State or of the United States. This exception applies only if the defendant shows that: A. Its business activities are subject to regulation by a state or federal agency; and B. The 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 statutory language makes it clear that the exemption is not a blanket exemption. Another question, however, is the private cause of action at Me. Rev. Stat. Ann. tit. 5 § 213(1), which 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, the statute clearly covers purchase- money credit, and it would likely be interpreted liberally to afford a private cause of action for unfair and deceptive practices arising out of non-purchase money loans as well, as "services has been interpreted in other states to encompass lending.
b. Insurance	Strong	The definition of "trade" and "commerce" discussed above is broad enough to encompass insurance, and the exemption at Me. Rev. Stat. Ann. tit. 5 § 208 is unlikely to be interpreted as a blanket exemption for insurance transactions.
c. Utilities	Strong	The definition of "trade" and "commerce" discussed above is broad enough to encompass utilty service, and the exemption at Me. Rev. Stat. Ann. tit. 5 § 208 is unlikely to be interpreted as a blanket exemption for utility transactions.

d. Post-sale acts (debt collection, repossession)	Strong	In <i>Newcombe v. Mooers</i> , 2000 WL 33675662 (Me. Super. 2000), a Superior Court found that improper repossession violated Me. Rev. Stat. Ann. Tit. 5 § 205-A.
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.

MARYLAND

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Strong	Md. Code Comm. Law §13-303 (unfair
or unconscionable acts		practices)
b. Broadly prohibits	Strong	Md. Code Comm. Law § 13-301(1), (3); §13-303
deceptive acts		
c. Provides the state agency	Strong	Md. Code Comm. Law §§ 13-204(12), 13-205.
substantive rulemaking		State has adopted several regulations.
authority		
	•	
2. Lack of preconditions		
to public enforcement		
a. Allows public	Strong	
enforcement without		
requiring a showing of the		
defendant's intent or		
knowledge		
	1	
3. Available remedies		
a. Equitable relief	Strong	Md. Code Comm. Law § 13-406
b. Restitution for	Strong	Md. Code Comm. Law § 13-406
consumers		
c. Civil penalty amount for	Weak	Md. Code Comm. Law § 13-410(a), (b) – up to
initial violations		\$1000 per violation; \$5000 per violation for
		repeat offenders.

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Mixed	Md. Code Comm. Law § 13-302 says "Any practice prohibited by this title is a violation of this title, whether or not any consumer in fact has been misled, deceived, or damaged as a result of that practice." However, <i>State v. Andrews</i> , 533 A.2d 282 (Md. App. 1987), suggests that this language means that, even though a practice was a violation, a consumer might not be entitled to a

b. Does not require a showing of public interest or public impact	Strong	remedy without showing reliance. In <i>Hoffman v.</i> <i>Stamper</i> , 843 A.2d 153, 191 (Md. Civ. App. 2004), an intermediate appellate court stated that for a UDAP claim "[t]he plaintiff also must prove that the defendant knew of the falsity of the statement or omission and intended to induce reliance by the plaintiff. Upon a showing of reasonable reliance, the plaintiff may recover any actual losses." This decision was appealed to Maryland's highest court, which affirmed this part of the decision without addressing the reliance issue: 867 A.2d 276 (Md. 2005). The intermediate appellate court's ruling that reliance is necessary is thus an impediment to consumers unless and until the higher court overturns it. In some cases, reliance may be presumed where, for example, the consumer went through with a purchase that included illegal fees.
c. Does not require pre-suit notice to the defendant	Strong	
2 Available normadias		

2. Available remedies		
a. Compensatory damages	Strong	Md. Code Comm. Law § 13-408
b. Multiple or punitive	Weak	
damages		
c. Attorney fees for	Strong	Md. Code Comm. Law § 13-408(b)
consumers		

3. Class actions		
a. Available under UDAP statute and other law	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.,</i> <i>Green v. H & 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).
4. Statute coverage		
a. Creditors and credit	Strong	Md. Code Comm. Law § 13-101(c)(1) defines consumer to include a recipient of consumer credit.
b. Insurance	Weak	Md. Code Comm. Law § 13-104(1) excludes

	r	
		"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
TT. 11.	TT 7 1	State.
c. Utilities	Weak	Md. Code Comm. Law § 13-104 provides that
		the law 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, Pub.
		Util. Cos. § 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." Md. Code, Pub. Util.
		Cos. § 2-112 provides that the Public Service
		Commission has "jurisdiction over each public
		service company that engages in or operates a
		utility business in the State." The exemption
		allows room for the UDAP statute to apply to
		any unregulated services or options, but the
		regulated activities of utility providers appear to
	~	be exempt.
d. Post-sale acts (debt	Strong	Md. Code Comm. Law § 13-301(14)(iii) makes a
collection, repossession)		violation of the state debt collection law a UDAP
		violation. Md. Code Comm. Law § 13-303(4)
		says that a person may not engage in any unfair
		or deceptive trade practice in the collection of
		consumer debts.
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. 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.

MASSACHUSETTS

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Strong	Mass. Gen. Laws Ch. 93A, § 2(a)
or unconscionable acts		
b. Broadly prohibits	Strong	Mass. Gen. Laws Ch. 93A, § 2(a)
deceptive acts		
c. Provides the state agency	Strong	Mass. Gen. Laws Ch. 93A, $\S 2(c)$ – and state has
substantive rulemaking		adopted a number of regulations.
authority		
	1	
2. Lack of preconditions		
to public enforcement		
a. Allows public	Strong	
enforcement without		
requiring a showing of the		
defendant's intent or		
knowledge		
	1	
3. Available remedies		
a. Equitable relief	Strong	Mass. Gen. Laws Ch. 93A, § 4
b. Restitution for	Strong	Mass. Gen. Laws Ch. 93A, § 4
consumers	~8	
c. Civil penalty amount for	Mixed	Mass. Gen. Laws Ch. 93A, § 4 (\$5000 per
initial violations		violation if defendant knew or should have
		known that practice was a violation)

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Strong	Heller Fin. v. INA, 573 N.E.2d 8 (Mass. 1991); International Fidelity Ins. Co. v. Wilson, 443 N.E. 2d 1308 (Mass. 1983); Slaney v. Westwood Auto, Inc., 322 N.E.2d 768 (Mass. 1975). See also Aspinall v. Philip Morris Cos., 813 N.E.2d 476, 486 (Mass. 2004).
b. Does not require a showing of public interest	Strong	

or public impact		
c. Does not require pre-suit notice to the defendant	Weak	Mass. Gen. Laws ch. 93A, § 9(3)
2. Available remedies		
a. Compensatory damages	Strong	Mass. Gen. Laws ch. 93A, § 9(1)
b. Multiple or punitive damages	Strong	§ 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.
c. Attorney fees for consumers	Strong	Mass. Gen. Laws ch. 93A, § 9(4)
3. Class actions		
a. Available under UDAP statute and other law	Strong	Mass. Gen. Laws ch. 93A, § 9(2)
4. Statute coverage		
a. Creditors and credit	Strong	Mass. Gen. Laws ch. 93A, § 3 exempts "transactions or actions otherwise permitted under laws as administered by" state and federal regulatory boards. Massachusetts courts have generally read the exemption under §3 narrowly, and this language does not appear to be interpreted to exclude creditors. In <i>Fleming v.</i> <i>National Union Fire Ins. Co.</i> , 837 N.E.2d 1113 (Mass. 2005), the Supreme Judicial Court of Massachusetts held that "a defendant must show more than the mere existence of a related or even overlapping regulatory scheme that covers the transaction. Rather, a defendant must show that such scheme affirmatively <i>permits</i> the practice which is alleged to be unfair or deceptive." In addition, the 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	Hopkins v. Liberty Mut. Ins. Co., 750 N.E.2d 943, 949-50 (Mass. 2001).
c. Utilities	Strong	Massachusetts appears to allow UDAP claims against utilities. 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.
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d. Post-sale acts (debt	Strong	The statute prohibits unfair and deceptive acts
collection, repossession)		and practice "in the conduct of any trade or
		commerce." Mass. Gen. Laws Ch. 93A, § 2(a).
		"Trade" and "commerce" are broadly defined to
		include "the advertising, the offering for sale,
		rent or lease, the sale rent, lease 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 situate." Mass. Gen. Laws Ch. 93A, §
		1(b). The Attorney General has adopted a debt
		collection regulation under the statute: Mass.
		Regs. Code tit. 940, §§ 7.01 to 7.11.
e. Real estate	Strong	Mass. Gen. Laws ch. 93A, § 1(b) defines trade or
		commerce to include real property.

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
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. Lack of preconditions		
to public enforcement		
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Strong	
	T	
3. Available remedies		
a. Equitable relief	Strong	Mich. Comp. Laws Ann. § 445.905
b. Restitution for consumers	Strong	Mich. Comp. Laws Ann. § 445.910(2)
c. 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

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. 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</i> . <i>Ameriquest Mortg. Co.</i> , 2003 WL 734169, at *3 (Mich. App. 2003), where the Court of Appeals of Michigan 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</i> <i>Co.</i> , 15 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.
b. Does not require a showing of public interest or public impact	Strong	
c. Does not require pre-suit notice to the defendant	Strong	
2. Available remedies		
a. Compensatory damagesb. Multiple or punitivedamages	Strong Weak	Mich. Comp. Laws Ann. § 445.911(2)
c. Attorney fees for consumers	Strong	Mich. Comp. Laws Ann. § 445.911(2)
3. Class actions		
a. Available under UDAP statute and other law	Strong	Mich. Comp. Laws Ann. § 445.911(3).
4. Statute coverage		
a. Creditors and credit	Weak	Mich. Comp. Laws Ann. § 445.904(1)(a) has been interpreted by a number of Michigan courts to exempt lending. <i>See, e.g., Cowles v. Bank</i> <i>West,</i> 687 N.W.2d 603, 607 (Mich. App. 2004), <i>aff'd in part, rev'd in part on other grounds,</i> 719 N.W.2d 94 (Mich. 2006).
b. Insurance	Weak	Mich. Comp. Laws Ann. § 445.904((1)(a), (3)
c. Utilities	Weak	Given the broad reading of the exemption in Mich. Comp. Laws Ann. §445.904 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	Weak	Mich. Comp. Laws Ann. § 445.902(g) defines

"trade or commerce" as "the conduct of a
husings mariding souds managery on service
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. § 445.903 requires that the
unfair, unconscionable, or deceptive act occur
"in the conduct of trade or commerce." In
DIRECTV, Inc. v. Cavanaugh, 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 Mich. Comp. Laws §§ 339.901 to 339.920 and
445.251 to 445.258, which licenses and regulates
debt collectors. In light of Michigan's extremely
broad interpretation of its exemption for
regulated industries, this is probably enough to
exempt debt collectors.
Yeak 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. See Price v. Long Realty, Inc., 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 Liss v. Lewiston-Richards,
Inc., 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 enormous
gap in coverage leaves consumers with little
redress under the state UDAP statute for unfair,
unconscionable, or deceptive practices in real
estate transactions.
v

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Weak	
or unconscionable acts		
b. Broadly prohibits	Strong	Minn. Stat. § 325F.69(1)
deceptive acts		
c. Provides the state agency	Weak	
substantive rulemaking		
authority		
	I	1
2. Lack of preconditions		
to public enforcement		
a. Allows public	Strong	
enforcement without		
requiring a showing of the		
defendant's intent or		
knowledge		
	1	
3. Available remedies		
a. Equitable relief	Strong	Minn. Stat. §§ 8.31(3), 325F.70
b. Restitution for	Strong	Minn. Stat. § 8.31(3a) allows the Attorney
consumers		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 parens
		patriae doctrine. See State by Humphrey v.
		Alpine Air Products, Inc., 500 N.W.2d 888, 896
		n. 4 (Minn. 1993).
c. Civil penalty amount for	Strong	Minn. Stat. § 8.31(3) - up to \$25,000
initial violations		

CONSUMER ACCESS TO	
JUSTICE	COMMENTS

1. Lack of preconditions		
for a suit		
 a. Does not require reliance b. Does not require a showing of public interest or public impact c. Does not require pre- 	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.</i> <i>Walser Automotive Groups, Inc.</i> , 683 N.W.2d 807, 811 (Minn. 2004), the Supreme Court of Minnesota reasserted its earlier holding in <i>Group Health Plan, Inc. v. Philip Morris Inc.</i> , 621 N.W.2d 2 (Minn. 2001), that "[a]llegations of reliance are not necessary to state a claim under section 8.31, subdivision 3a, for damages resulting from a violation" (quotations and citations omitted). See also Ford Motor Credit Co. v. Majors, 2005 WL 1021551, 3 (Minn. App. 2005) (citing <i>Group</i> <i>Health</i> for the proposition that the "legislature eliminated requirements of pleading and proving traditional common-law reliance as an element of claim for statutory misrepresentation in sales action"). However, the Minnesota Supreme Court has also made it clear that some level of reliance may be necessary to prove causation: "reliance is a component of the causal nexus requirement for a private consumer fraud class action under Minn. Stat. § 8.31, subd." <i>Weigand</i> at 812. An unreported decision <i>Higgins v. Harold-</i> <i>Chevrolet-Geo, Inc.</i> , 2004 WL 2660923 (Minn. App. 2004), interprets these decisions to require proof of reliance to survive summary judgment and to recover damages. It is also clear from <i>Group Health Plan</i> that, if reliance is required, it can be established through circumstantial evidence such as market studies, and <i>Weigand</i> held that oral representations are actionable even in the face of directly contrary written representations. 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 virtually impossible for consumers to bring suit under the statute.
suit notice to the defendant	Suong	

2. Available remedies		
2. Available relifeutes		
a. Compensatory damagesb. Multiple or punitive damages	Strong Weak	Minn. Stat. § 8.31(3a)
c. Attorney fees for consumers	Strong	Minn. Stat. § 8.31(3a)
3. Class actions		
a. Available under UDAP statute and other law	Strong	Nothing in the statute precludes class actions, and several have been allowed, <i>e.g.</i> , <i>Wiegand</i> <i>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).
1 Statuta aguaraga		
4. Statute coverage a. Creditors and credit	Strong	Merchandise is defined by Minn. Stat. § 325F.68(2) to include loans, and § 325F.691 is a specific prohibition regarding mortgage loan closings. In <i>Higgins v. Harold-Chevrolet-</i> <i>Geo, Inc.</i> , 2004 WL 2660923, 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." In <i>Shafer v. GSF Mortg. Corp.</i> , 2003 WL 21005793 (Minn. App. 2003), a Minnesota appellate court upheld an award of summary judgment to plaintiffs who sued under the state UDAP statute for placing the plaintiff (and borrower) in a sub-prime loan even though he had good credit.
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 insurance is covered: <i>Mitchell v. Chicago</i> <i>Title Ins. Co.</i> 2004 WL 2137815, 2 (Minn. Dist. Ct. 2004) ("Plaintiffs are specifically not precluded from bringing their consumer fraud claim pursuant to Minnesota Statutes Sections 325F.68 and 325F.69 or deceptive trade practices claim pursuant to Minnesota Statutes

c. Utilities	Strong	Section 325D.44"); <i>Force v. ITT Hartford Life</i> & <i>Annuity Ins. Co.</i> , 4 F. Supp. 2d 843, 856 (D. Minn.1998). Although Minnesota courts have not addressed this 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)	Undecided	Minn. Stat. § 325F.69 requires that the unlawful practice must be "in connection with the sale of any merchandise." Although their rationale is not strong, several courts have construed this or other language in the statute to exclude post-sale acts. <i>See Thinesen v. JBC Legal Group, P.C.</i> , 2005 WL 2346991 (D. Minn. 2005) (dismissing claims under Minn.Stat. 325F.69, subd. 1. and Minn. Stat. § 325D.11 subd. 1 because there was "[n]ot a sufficient relationship between the sale of goods and the collection activities."); <i>cf.</i> <i>Maneval v. Jon R. Hawks, Ltd.</i> , 1999 WL 33911242 (D. Minn. 1999) (dismissing claim under another Minnesota UDAP statute because debt collection is not "'similar' to the listed conduct" that is prohibited in the act).
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.

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Mixed	Miss. Code § 75-24-5(1) broadly prohibits
or unconscionable acts		deceptive practices, but only allows AG
		enforcement of this prohibition.
b. Broadly prohibits	Mixed	Miss. Code § 75-24-5(1) broadly prohibits
deceptive acts		deceptive practices ,but only allows AG
		enforcement of this prohibition.
c. Provides the state agency	Strong	Miss. Code § 75-24-27(1)(f) allows the Attonrey
substantive rulemaking		General to adopt substantive regulations.
authority		However, although Mississippi proposed several
		UDAP regulations in 1994, none have ever been
		adopted.
2 Look of mean ditions		
2. Lack of preconditions to public enforcement		
a. Allows public	Strong	
enforcement without	Strong	
requiring a showing of the		
defendant's intent or		
knowledge		
3. Available remedies		
a. Equitable relief	Strong	Miss. Code § 75-24-9
b. Restitution for	Strong	Miss. Code § 75-24-11
consumers		
c. Civil penalty amount for	Strong	Miss. Code § 75-24-19(1)(b) (\$10,000 per
initial violations		violation, but only if a knowing and willful
		violation is established by clear and convincing
		evidence)

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Undecided	There are no decisions addressing this question.
b. Does not require a	Strong	

aborring of public interact		
showing of public interest		
or public impact	XX 7 1	Mine On to 8 75 04 15/0
c. Does not require pre-	Weak	Miss. Code § 75-24-15(2) requires pre-suit
suit notice to the defendant		participation in AG-approved informal dispute
		settlement program, which necessarily entails
		a pre-suit notice.
2. Available remedies		
a. Compensatory damages	Strong	Miss. Code § 75-24-15(1)
b. Multiple or punitive	Weak	
damages	vv curk	
	Weels	Miss Code \$ 75.24 15(4) suth arizes a fee
c. Attorney fees for	Weak	Miss. Code § 75-24-15(4) authorizes a fee
consumers		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.
3. Class actions		
a. Available under UDAP	Weak	Mississippi has no class action rule or statute
statute and other law	Weak	••
statute and other law		and Mississippi state courts do not recognize
		class actions.
	T	
4. Statute coverage		
a. Creditors and credit	Undecided	Miss. Code § 75-24-3(b) defines "trade or
		commerce" broadly, and nothing in the statute
		or decisions excludes credit. Under Miss.
		Code § 75-24-15(1), a private cause of action
		is afforded only to a person who "purchases or
		leases goods or services." Although courts in
		other states have held that "services" includes
		extensions of credit, Mississippi 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.
b. Insurance	Weak	Taylor v. Southern Farm Bureau Cas. Co.,
		954 So.2d 1045 (Miss. App. 2007) holds that
		insurance is excluded. While the Mississippi
		Supreme Court has not ruled on the question,
		this decision stands as an impediment to
		consumers seeking a remedy for unfair or
		deceptive practices by insurers.
c. Utilities	Strong	Miss. Code § 75-24-3(b) defines "trade or
		,
c. Utilities	Strong	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	Strong	Miss. Code § 75-24-3(b) defines "trade or
collection, repossession)		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." Further, unfair and
		deceptive practices are prohibited as long as
		they are "in or affecting" commerce. Nothing
		in the statute or decisions excludes post-sale activities.
e. Real estate	Undecided	Miss. Code § 75-24-3(b) defines "trade or
		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.

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Strong	Mo. Rev. Stat. § 407.020(1)
or unconscionable acts		
b. Broadly prohibits	Strong	Mo. Rev. Stat. § 407.020(1)
deceptive acts		
c. Provides the state agency	Strong	Mo. Rev. Stat. § 407.145. The state has adopted
substantive rulemaking		a number of rules.
authority		
	1	
2. Lack of preconditions		
to public enforcement		
a. Allows public	Strong	
enforcement without		
requiring a showing of the		
defendant's intent or		
knowledge		
	1	
3. Available remedies		
a. Equitable relief	Strong	Mo. Rev. Stat. § 407.100(1)
b. Restitution for	Strong	Mo. Rev. Stat. § 407.100(4)
consumers		
c. Civil penalty amount for	Weak	Mo. Rev. Stat. § 407.100(6) - up to \$1000 per
initial violations		violation unless bona fide error shown.

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Strong	Reliance is not required under Missouri's UDAP statute. <i>Hess v. Chase Manhattan</i> <i>Bank, USA, N.A.</i> , 220 S.W.3d 758 (Mo. 2007) (distinguishing common law fraud from a state UDAP claim).
b. Does not require a showing of public interest or public impact	Strong	
c. Does not require pre-	Strong	

suit notice to the defendant		
2. Available remedies		
a. Compensatory damages	Strong	Mo. Rev. Stat. § 407.025(1)
b. Multiple or punitive damages	Strong	Mo. Rev. Stat. § 407.025 allows punitive damages.
c. Attorney fees for consumers	Undecided	Mo. Rev. Stat. § 407.025(1) states that the court "may 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 Missouri 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.
3. Class actions		
a. Available under UDAP statute and other law	Strong	Mo. Rev. Stat. § 407.025(2)
4. Statute coverage		
a. Creditors and credit	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). Mo. Rev. Stat. § 407.010(4) defines "merchandise" to include "intangibles" and "services." This language appears to be broad enough to include credit. "Trade" or "commerce" is defined to include distribution of "any property" and "any other thing of value," which clearly includes credit. 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 AG to proceed "or such powers are provided to either the attorney general or a private citizen by statute." This is a very small subset of creditors, so this language implies that the creditors who are not mentioned <i>are</i> covered. (And in addition, after § 407.020.2(2) was

		adopted, the legislature passed § 407.025, which authorizes private citizens to bring suit under the UDAP statute. This likely satisfies the requirement that "such powers [be] provided to a private citizen by statute"). 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." The only case addressing the question of coverage of credit transactions is <i>Fielder v. Credit</i> <i>Acceptance Corp.</i> , 19 F. Supp. 2d 966 (W.D.Mo. 1998), <i>rev'd on other grounds</i> <i>Fielder v. Credit Acceptance Corp.</i> 188 F.3d 1031 (8 th Cir. 1999), a suit by a consumer in which a federal district court held "that section 407.020 does apply to 'services' such as, in this case, financing a retail installment contract." Since UDAP statutes are to be interpreted liberally, Missouri courts are likely to agree with this view.
b. Insurance	Undecided	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. Mo. Rev. Stat. § 407.020(2)(2) 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 likely satisfies the requirement that "such powers [be] provided to a private citizen by statute."
c. Utilities	Strong	The statute does not exclude 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 <i>not</i> excluded.
d. Post-sale acts (debt collection, repossession)	Undecided	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 broad language "in connection with" would cover post-sale acts as long as the transaction is in "trade or commerce" and involves "merchandise." Mo. Rev. Stat. § 407.010(4) defines "merchandise." broadly as "any objects, wares, goods, commodities, intangibles, real estate, or services,", and Mo. Rev. Stat. § 407.010 defines "trade" or "commerce" broadly to include "the advertising, offering for sale, sale, or distribution, or any combination thereof, of any services and any property, tangible, or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated." The conclusion that the statute applies to post-sale acts is strengthened by the concluding sentence of Mo. Rev. Stat. § 407.20(1), which provides: "Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement or solicitation." On the other hand, the Eighth Circuit, without addressing the "before, during or after" language, said the statute does not apply to repossession conduct. <i>Williams v. Regency Financial Corp.</i> , 309 F.3d 1045, 1050 (8 th Cir. 2002). Even though this decision may ultimately be rejected by Missouri courts, at present it stands as an impediment to consumers.
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.

MONTANA

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
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.
2. Lack of preconditions to public enforcement		
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.
3. Available remedies		
a. Equitable relief	Strong	Mont. Code § 30-14-111(1)
b. Restitution for consumers	Strong	Mont. Code § 30-14-131(1)
c. Civil penalty amount for initial violations	Strong	Mont. Code § 30-14-142(2) – up to \$10,000 per violation

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Undecided	Montana courts have not addressed this question. Since we assume that states will interpret their UDAP statutes liberally, it is reasonable to conclude that Montana courts will not require reliance.
b. Does not require a showing of public interest or public impact	Strong	
c. Does not require pre-	Strong	

suit notice to the defendant		
2. Available remedies		
a. Compensatory damages	Strong	Mont. Code § 30-14-133(1)
b. Multiple or punitive	Strong	Mont. Code § 30-14-133(1)
damages		
c. 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, Iinc.</i> 112 P.3d 1018, 1026- 27 (Mont. 2005).
2. Class actions		
3. Class actions a. Available under UDAP	Weak	Mont Code & 20 14 122(1) prohibits along
a. Available under UDAP statute and other law	weak	Mont. Code § 30-14-133(1) prohibits class actions
statute and other raw		actions
4. Statute coverage		
a. Creditors and credit	Strong	The Supreme Court of Montana made clear in <i>Baird v. Norwest Bank</i> , 843 P.2d 327 (Mont. 1992), that Montana's UDAP statute "applies to consumer loans by banks in the lending and collecting of such loans."
b. Insurance	Weak	Britton v. Farmers Ins. Group (Truck Ins. Exchange), 721 P.2d 303, 323 (Mont. 1986).
c. Utilities	Weak	Mont. Code § 30-14-105 excludes "actions or transactions permitted under laws administered by the Montana public service commission." Mont. Code § 69-3-102 places public utilities under the commission's regulatory authority. In <i>Granbois v. Big Horn</i> <i>County Elec. Co-op., Inc.</i> , 986 P.2d 1097, 1102 (Mont. 1999), the Montana Supreme Court interpreted this exemption not to apply to private electric cooperatives that are not regulated by the public service commission, but this applies only to rural areas of the state.
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). This opinion was cited with

		favor as applying to repossession in <i>Entriken</i> <i>v. Motor Coach Federal Credit Union</i> , 256 Mont. 85, 845 P.2d 93 (Mont. 1992).
e. Real estate	Strong	The definitions of "consumer" and "trade and commerce" in 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.

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Strong	Neb. Rev. Stat. § 59-1602
or unconscionable acts		
b. Broadly prohibits	Strong	Neb. Rev. Stat. § 59-1602
deceptive acts		
c. Provides the state agency	Weak	
substantive rulemaking		
authority		
	1	
2. Lack of preconditions		
to public enforcement		
a. Allows public	Strong	
enforcement without		
requiring a showing of the		
defendant's intent or		
knowledge		
3. Available remedies		
a. Equitable relief	Strong	Neb. Rev. Stat. § 59-1608(1)
b. Restitution for	Strong	Neb. Rev. Stat. § 59-1608(2)
consumers		
c. Civil penalty amount for	Weak	Neb. Rev. Stat. § 59-1614 (up to \$2000 per
initial violations		violation)

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. 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.
b. Does not require a showing of public interest or public impact	Weak	Nelson v. Lusterstone Surfacing Co., 605 N.W.2d 136 (Neb. 2000)

c. Does not require pre-	Strong	
suit notice to the defendant	Strong	
suit notice to the defendant		
2. Available remedies		
a. Compensatory damages	Strong	Neb. Rev. Stat. § 59-1609
b. Multiple or punitive	Weak	
damages		
c. Attorney fees for consumers	Strong	Neb. Rev. Stat. § 59-1609
3. Class actions		
a. Available under UDAP statute and other law	Strong	There is no language in the statute that restricts class actions, and Nebraska courts have allowed class actions to proceed. <i>See</i> , <i>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). <i>See also Hage v.</i> <i>General Service Bureau</i> , 306 F. Supp. 2d 883 (D. Neb. 2003) (denying defendant's summary judgment motion where plaintiff filed a class action asserting claims under Nebraska's UDAP statute). In <i>Kanne v. Visa U.S.A.</i> , 723 N.W.2d 293 (Neb. 2006), the Nebraska Supreme Court affirmed the dismissal of a UDAP class action on standing grounds, but did not suggest that UDAP class actions were otherwise impermissible.
1 Statuta covorago		
4. Statute coverage a. Creditors and credit	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 Director of Insurance, the Public Service Commission, the Federal Energy Regulatory Commission, or any other regulatory body or officer acting under statutory authority of this state or the United States." Neb. Rev. Stat. § 59-1617(2) goes on to bring loan brokers under the UDAP statute, but that is only a small segment of the credit industry. The question is whether Neb. Rev. Stat. § 59-1617 provides a blanket exemption for credit transactions. In <i>Kuntzelman v. Avco</i>

		Financial Services of Nebraska, Inc., 291
		N.W.2d 705, 707 (Neb. 1980), the Nebraska
		Supreme Court held that "[c]onduct is not
		immunized merely because the person so
		acting falls within the jurisdiction of a
		regulatory body." However, since the
		particular conduct in question was regulated –
		and prohibited $-$ by the state installment loan
		laws, the court held that it was exempt from
		the statute. In Wrede v. Exchange Bank of
		Gibbon, 531 N.W.2d 523, 529 (Neb. 1995),
		the Nebraska Supreme Court reiterated that
		"while particular conduct is not immunized
		from the operation of the Consumer Protection
		Act merely because the actor comes within the
		jurisdiction of some regulatory body,
		immunity does arise if the conduct itself is
		also regulated." In Little v. Gillette, 354
		N.W.2d 147, 152 (Neb. 1984), the court held
		that a bank and a real estate company were
		exempt from a UDAP misrepresentation claim
		simply because they were regulated. While
		these decisions make it clear that there is no
		blanket exemption for creditors, excluding
		credit transactions whenever the conduct is
		either permitted or prohibited by other law
	~	makes coverage of credit transactions weak.
b. Insurance	Strong	Notwithstanding the language of Neb. Rev.
		Stat. § 59-1617(1) quoted above, 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."
c. Utilities	Weak	Neb. Rev. Stat. § 59-1617(1) provides:
	,, cax	"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, the Federal Energy Regulatory
		Commission, or any other regulatory body or
		officer acting under statutory authority of this
		state or the United States." Although the
		Nebraska Supreme Court has interpreted this

		language not to be a blanket exemption, its exclusion of conduct that is either permitted or prohibited by other law makes coverage of utility transactions weak. 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	Collection efforts appear to be covered under the state's UDAP statute. <i>See Hage v. General</i> <i>Service Bureau</i> , 306 F. Supp. 2d 883 (D. Neb. 2003) (declining to grant defendant's motion for summary judgment because although the defendant collection agency was generally regulated, its specific acts were not).
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.

NEVADA

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair or unconscionable acts	Weak	
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"; § 598.0923(2) and (3) add "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. Lack of preconditions to public enforcement		
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 or intentional.
3. Available remedies		
a. Equitable relief	Strong	Nev. Rev. Stat. §§ 598.0963(3), 598.0979
b. Restitution for consumers	Strong	Nev. Rev. Stat. §§ 598.0971(2)(c), (4), 598.0979.
c. Civil penalty amount for initial violations	Mixed	Nev. Rev. Stat. § 598.0999(2) - up to \$5000 per violation if willful

Consumer Access to Justice		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require	Undecided	The statute does not expressly require reliance,

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reliance		so it is likely that Nevada courts will find that
		reliance is not required, but Nevada courts
h Doos not require a	Strong	have not yet addressed the question.
b. Does not require a	Strong	
showing of public interest		
or public impact	Character	
c. Does not require pre-	Strong	
suit notice to the defendant		
2. Available remedies		
2. Available Femeures		
a. Compensatory damages	Strong	Nev. Rev. Stat. § 41.600(3)(a)
b. Multiple or punitive	Weak	
damages		
c. Attorney fees for	Strong	Nev. Rev. Stat. § 41.600(3)(b)
consumers		
3. Class actions	~	
a. Available under UDAP	Strong	Nothing in the statute precludes class actions,
statute and other law		and there are several examples of UDAP class
		actions in Nevada. In Nevada Power Co. v.
		Eighth Judicial Dist. Court of Nevada, 102
		P.3d 578 (Nev. 2004), the Supreme Court of
		Nevada refused to dismiss a class action based
		suit based on UDAP claims against a public
		utility. See also Sobel v. Hertz Corp., 2007
		WL 2710725 (D. Nev. 2007), motion to certify
		<i>appeal granted</i> , 2007 WL 428.7473 (D. Nev.
		Dec. 5, 2007).
4. Statute coverage	<u></u>	N. D. G. & 8 500 0015 111 1 1
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 transactions. While
		many of the substantive prohibitions set forth
		in Nev. Rev. Stat. § 598.0915 are confined to
		transactions involving goods or services,
		several broad prohibitions are not restricted in
		this way. Nev. Rev. Stat. § 598.0955(1)(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. 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.
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. Nev. Rev. Stat. § 598.0955(1)(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 insurance.
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 transactions. 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(1)(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 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" (§ 598.0923(3)), "knowingly misrepresent[ing] the legal rights, obligations or remedies of a party to a transaction" (§ 598.092(8)), and "knowingly mak[ing] any other false representation in a transaction" (§ 598.0915(15)) would be applicable to abusive debt collection.

e. Real estate	Strong	Nev. Rev. Stat. § 598.0915 prohibits deceptive
	C	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
		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.

NEW HAMPSHIRE

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Strong	N.H. Rev. Stat. § 358-A:2
or unconscionable acts		
b. Broadly prohibits	Strong	N.H. Rev. Stat. § 358-A:2
deceptive acts		
c. Provides the state agency	Weak	
substantive rulemaking		
authority		
2. Lack of preconditions		
to public enforcement		
a. Allows public	Strong	
enforcement without		
requiring a showing of the		
defendant's intent or		
knowledge		
	-	
3. Available remedies		
a. Equitable relief	Strong	N.H. Rev. Stat. § 358-A:4(III)(a)
b. Restitution for	Strong	N.H. Rev. Stat. § 358-A:4(III)(a)
consumers		
c. Civil penalty amount for	Strong	N.H. Rev. Stat. § 358-A:4(III)(b) – up to
initial violations		\$10,000 per violation, but court is to determine
		number of violations without regard to number
		of persons affected.

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Undecided	In Longden v. Phillip Morris, 2003 WL 22341280 (N.H. Super. 2003), a Superior Court declined to rule on whether reliance was required, denying the defendant's motion for summary judgment on other grounds. A federal court has found that New Hampshire's UDAP statute does not require reliance.

		Mulligan v. Choice Mortgage Corp., 1998 WL 544431 (D.N.H. 1998). In that case, the court cited Fraser Eng'g Co. v. Desmond, 524 N.E.2d 110, 112 (Mass. App. Ct.1988) to support its decision not to require reliance. The court reasoned that New Hampshire often borrows from Massachusetts case law in construing the similar UDAP statute in that state. Although not controlling, the ruling in Mulligan has not been overturned and is consistent with the rule that UDAP statutes are to be liberally construed.
b. Does not require a showing of public interest or public impact	Strong	
c. Does not require pre- suit notice to the defendant	Strong	
2. Available remedies		
a. Compensatory damages b. Multiple or punitive	Strong Strong	N.H. Rev. Stat. § 358-A:10(1) N.H. Rev. Stat. § 358-A:10(1) if willful or
damages c. Attorney fees for consumers	Strong	knowing N.H. Rev. Stat. § 358-A:10(1)
3. Class actions		
a. Available under UDAP statute and other law	Strong	N.H. Rev. Stat. § 358-A:10-a <i>See LaChance</i> v. U.S. Smokeless Tobacco Co., 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).
4. Statute coverage		
a. Creditors and credit	Weak	N.H. Rev. Stat. § 358-A:3(I) excludes "[t]rade or commerce that is subject to the jurisdiction of the bank commissioner, the director of securities regulation, the insurance commissioner, the public utilities commission, the financial institution regulators of other states, or federal banking or securities regulators who possess the authority to regulate unfair or deceptive trade practices."
b. Insurance	Weak	N.H. Rev. Stat. § 358-A:3(I) excludes trade or commerce subject to the jurisdiction of the insurance commissioner or comparable

		regulators in other states.
c. Utilities	Weak	N.H. Rev. Stat. § 358-A:3(I) excludes trade or
		commerce subject to the jurisdiction of the
		public utilities commissioner.
d. Post-sale acts (debt	Strong	Given the statute's broad definitions of unfair
collection, repossession)		and deceptive practices and of trade or
		commerce, and the absence of any statutory
		exemption for post-sale acts, it is likely that
		New Hampshire courts will find the statute to
		apply to post-sale acts.
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.

NEW JERSEY

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Strong	N.J. Stat. Ann. § 56:8-2
or unconscionable acts		
b. Broadly prohibits	Strong	N.J. Stat. Ann. § 56:8-2
deceptive acts		
c. Provides the state agency	Strong	N.J. Stat. Ann. § 56:8-4. The state has adopted a
substantive rulemaking		number of regulations.
authority		
2. Lack of preconditions		
to public enforcement		
a. Allows public	Strong	
enforcement without		
requiring a showing of the		
defendant's intent or		
knowledge		
	1	1
3. Available remedies		
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a. Equitable relief	Strong	N.J. Stat. Ann. § 56:8-8
b. Restitution for	Strong	N.J. Stat. Ann. §§ 56:8-8, 56:8-14, 56:8-15
consumers		
c. Civil penalty amount for	Strong	N.J. Stat. Ann. § 56:8-13 (up to \$10,000 for first
initial violations		offense, up to \$20,000 for second and
		subsequent offense)

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Strong	Gennari v. Weichert Co. Realtors, 691 A.2d 350, 366 (N.J. 1997). See also International Union of Operating Engineers Local No. 68 Welfare Fund v. Merck & Co., Inc., 929 A.2d 1076, 1086 (N.J. 2007).
b. Does not require a showing of public interest or public impact	Strong	
c. Does not require pre-suit	Strong	

notice to the defendant		
	1	
2. Available remedies		
a. Compensatory damages	Strong	N.J. Stat. Ann. § 56:8-19
b. Multiple or punitive damages	Strong	N.J. Stat. Ann. § 56:8-19 (treble damages)
c. 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 "shall also award" 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).
3. Class actions		
a. Available under UDAP statute and other law	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.</i> <i>Life Ins. Co.</i> , 896 A.2d 1101 (N.J. Super., App. Div. 2006).
1 Statuta coverage		
4. Statute coverage a. Creditors and credit	Strong	N.J. Stat. Ann. § 56:8-1(c) defines "merchandise" to include "anything offered, directly or indirectly to the public for sale." "Sale" is defined by N.J. Stat. Ann. § 56:8-1(e) to include "any distribution." The New Jersey Supreme Court held that the UDAP statute applies to extensions of credit in <i>Lemelledo v.</i> <i>Beneficial Management Corp.</i> , 696 A.2d 546 (N.J. 1997).
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."

		Although it did not reach the question whether the statute applies to insurance claim settlement practices, the New Jersey Supreme Court held that the UDAP statute applies to sales of insurance policies in <i>Lemelledo v. Beneficial</i> <i>Management Corp.</i> , 696 A.2d 546 (N.J. 1997). While some New Jersey decisions hold that the statute does not apply to claims settlement practices, they either precede <i>Lemelledo</i> or rely on pre- <i>Lemelledo</i> cases.
c. Utilities	Weak	Daaleman v. Elizabethtown Gas Co., 390 A.2d 566 (N.J. 1978) held that the UDAP statute did not apply to a utility company's alleged manipulation of a contract clause as a way of overbilling customers 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)	Strong	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 language appears to be broad enough to cover post-sale acts, and cases such as <i>Whittingham v.</i> <i>Amended Mortg. Elec. Registration Services,</i> <i>Inc.</i> , 2007 WL 1456196 (D.N.J 2007), have applied it to debt collection.
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).

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Strong	N.M. Stat. Ann. §§ 57-12-2(E), 57-12-3
or unconscionable acts		
b. Broadly prohibits	Strong	N.M. Stat. Ann. §§ 57-12-2(D), 57-12-3
deceptive acts	_	
c. Provides the state agency	Strong	N.M. Stat. Ann. § 57-12-13. The state has
substantive rulemaking	_	adopted several rules.
authority		-
	•	

2. Lack of preconditions		
to public enforcement		
a. Allows public	Mixed	N.M. Stat. Ann. §§ 57-12-2(D) requires
enforcement without		knowledge as an element of a deceptive practice.
requiring a showing of the		This requirement was held applicable to all
defendant's intent or		deceptive practices listed in the statute by
knowledge		Stevenson v. Louis Dreyfus Corp., 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.
		-
3. Available remedies		
a. Equitable relief	Strong	N.M. Stat. Ann. § 57-12-8
b. Restitution for	Strong	N.M. Stat. Ann. § 57-12-8(B)
consumers		
c. Civil penalty amount for	Mixed	N.M. Stat. Ann. § 57-12-11 (up to \$5000 per

c. Civil penalty amount for	Mixed	N.M. Stat. Ann. § 57-12-11 (up to \$5000 per
initial violations		violation if willful)

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Strong	Reliance is not required to sustain a UDAP claim in New Mexico. In <i>Lohman v. Daimler-</i> <i>Chrysler Corp.</i> , 166 P.3d 1091, 1098 (N.M.

h. Doos not require a	Strong	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 ((citing <i>Smoot v.</i> <i>Physicians Life Ins. Co.</i> , 87 P.3d 545 (N.M. App. 2003)) <i>see also Mulford v. Altria Group,</i> <i>Inc.</i> , 242 F.R.D. 615 (D.N.M. 2007).
b. Does not require a showing of public interest or public impact	Strong	
c. Does not require pre- suit notice to the defendant	Strong	

2. Available remedies		
a. Compensatory damages	Strong	N.M. Stat. Ann. § 57-12-10
b. Multiple or punitive	Strong	N.M. Stat. Ann. § 57-12-10(B)
damages		
c. Attorney fees for	Strong	N.M. Stat. Ann. § 57-12-10(C)
consumers		

3. Class actions		
a. Available under UDAP statute and other law	Strong	There is nothing in the statute that would prohibit class actions, and several UDAP class actions have been allowed. In <i>Lohman v.</i> <i>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. <i>See also In re N.M. Indirect</i> <i>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. Statute coverage		
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), the definition of "unfair or deceptive trade practice," includes 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 could be construed to

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		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.</i> <i>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 could be construed to exclude insurance. However, 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. In <i>Azar v. Prudential Ins. Co</i> , 68 P.3d 909, 928 (N.M. App. 2003), an appellate court ruled that insurers have a duty to disclose under the state UDAP statute "depending on the materiality of the facts." The court cited <i>Campos v. Brooksbank</i> , 120 F. Supp. 2d 1271, 1275 n. 3, 1277-78 (D.N.M.2000), which stated that "the specific activity which would otherwise constitute a violation of the Unfair Trade Practices Act [must be] in fact 'permitted' by the applicable law or regulation."

c. Utilities	Strong	Utilities appear to be covered under the state's UDAP statute unless the challenged practice is specifically authorized by a utility regulator. <i>See Summit Properties, Inc. v. Public Service</i> <i>Co. of New Mexico</i> , 138 N.M. 208, 118 P.3d 716 (N.M. App. 2005) (holding that a public utility was not exempt from UDAP coverage because their actions were beyond the scope of the public utility commission). <i>Cf. Valdez v.</i> <i>State</i> , 132 N.M. 667, 54 P.3d 71 (N.M. 2002) (dismissing claims against a telephone service provider because its actions were expressly permitted).
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 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 seems clear that debt collection is covered. <i>See also Campos</i> <i>v. Brooksbank</i> , 120 F. Supp. 2d 1271 (D.N.M. 2000) (refusing to dismiss UDAP claim against attorney for unfair collection practices); <i>Russey v. Rankin</i> , 911 F. Supp. 1449 (D.N.M. 1995) (awarding treble damages where attorney sent false and misleading letter to debtors); <i>Page & Wirtz</i> <i>Const. Co. v. Solomon</i> , 794 P.2d 349, 353 (N.M. 1990) (phone call might have been covered by state UDAP statute if it "was an attempt to collect a debt").
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: McElhannon v. Ford, 73 P.3d 827 (N.M. App.
	2003). <i>See also</i> Kysar v. Amoco Production Co., 379 F.3d 1150, 1157 (10 th 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.	
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NEW YORK

N.Y. Exec. Law § 63(12) (McKinney)

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair or unconscionable acts	Mixed	N.Y. Exec. Law § 63(12) allows the Attorney General to bring suit in the case of "repeated fraudulent or illegal acts," defined to include "unconscionable contract provisions." The provisions enforceable by consumers, however, only prohibit deceptive acts.
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	
	-	
2. Lack of preconditions to public enforcement		
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Strong	
3. Available remedies		
a. Equitable relief	Strong	N.Y. Gen. Bus. Law § 349(b); N.Y. Exec. Law § 63(12).
b. Restitution for consumers	Strong	N.Y. Gen. Bus. Law § 349(b); N.Y. Exec. Law § 63(12).
c. Civil penalty amount for initial violations	Mixed	N.Y. Gen. Bus. Law § 350-d (up to \$5000 per violation)

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Strong	Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank, 647 N.Y.S.2d 20 (N.Y. 1995) states that reliance is not required.

b. Does not require a showing of public interest	Weak	Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank, 647 N.Y.S.2d 20 (N.Y.
or public impact		1995) requires a showing of a broader impact on consumers at large.
c. Does not require pre-suit notice to the defendant	Strong	
2. Available remedies		
a. Compensatory damages	Strong	N.Y. Gen. Bus. Law §§ 349(h), 350-3(3)
b. Multiple or punitive	Mixed	N.Y. Gen. Bus. Law § 349(h) allows treble
damages		damages, but capped at \$1000. N.Y. Gen. Bus.
		Law § 350-e(3) allows treble damages with a \$10,000 cap.
c. Attorney fees for consumers	Strong	N.Y. Gen. Bus. Law §§ 349(h), 350-e(3)
3. Class actions		
a. Available under UDAP	Strong	Nothing excludes class actions and there are
statute and other law	U	New York decisions allowing consumers to
		assert UDAP claims in class actions.
4. Statute coverage		
a. Creditors and credit	Strong	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 construed this exemption somewhat narrowly. An appellate court ruled that "[c]ompliance with regulations does not immunize misconduct outside the regulatory scope." <i>Sclafani v. Barilla America,</i> <i>Inc.</i> , 19 A.D.3d 577, 796 N.Y.S.2d 548 (2005) (citing <i>Blue Cross and Blue Shield of New Jersey</i> <i>v. Philip Morris, Inc.</i> , 133 F. Supp. 2d 162, 175 (E.D.N.Y. 2001)). Another appellate court ruled that "making deceptive statements cannot be considered compliance with federal rules, regulations, and statutes, as required by General
		Business Law § 349 (d). <i>People ex rel. Spitzer v.</i> <i>General Electric Co., Inc.,</i> 302 A.D.2d 314, 756 N.Y.S.2d 520 (2003) (emphasis supplied). Nonetheless, some defendants have had success in dismissing UDAP claims based on the

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		exemption. In <i>Polzer v. TRW, Inc.</i> , 256 A.D.2d
		248, 682 N.Y.S.2d 194 (1998), an appellate court
		upheld a lower court's decision to dismiss a
		plaintiff's UDAP claims for issuing credit cards
		in plaintiff's names, applied for by imposters,
		because the defendant was in compliance with
		federal regulations. In Diaz v. Paragon Motors
		of Woodside, Inc., 424 F. Supp. 2d 519, 542
		(E.D.N.Y. 2006), summary judgment was
		granted on plaintiff's UDAP claims, because the
		defendant was found to be in compliance with
		the ECOA. Accord Kramer v. Marine Midland
		Bank, 559 F. Supp. 273 (S.D.N.Y. 1983).
		However, in other cases consumers have
		succeeded in bringing UDAP claims against
		lenders. See e.g. Bonior v. Citibank, N.A., 14
		Misc.3d 771, 828 N.Y.S.2d 765 (N.Y.City Civ.
		Ct. 2006) (finding UDAP liability for failure to
		disclose information to clients and advise them
		to obtain legal counsel); La Salle Bank Nat. Ass'n
		v. Kosarovich, 31 A.D.3d 904, 820 N.Y.S.2d 144
		(2006). Overall, the exemption appears to be
		construed fairly narrowly, not as a blanket
		exemption for lenders.
b. Insurance	Mixed	UDAP claims against insurance companies
		appear to be allowed under New York's statute.
		In Harvey v. Metropolitan Life Ins. Co., 34
		A.D.3d 364, 827 N.Y.S.2d 6 (2006), an appellate
		court affirmed the denial of defendant's motion
		to dismiss in a UDAP claim against an insurance
		company. Accord, Shebar v. Metropolitan Life
		company. <i>Accord</i> , Shebar v. Metropolitan Life Ins. Co., 25 A.D.3d 858, 807 N.Y.S.2d 448
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		Ins. Co., 25 A.D.3d 858, 807 N.Y.S.2d 448 (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.</i> , Hassett v. N.Y. Central Mut. Fire Ins. Co., 753 N.Y.S.2d 788 (App. Div. 2003). These
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c. Utilities	Strong	Ins. Co., 25 A.D.3d 858, 807 N.Y.S.2d 448 (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.</i> , Hassett v. N.Y. Central Mut. Fire Ins. Co., 753 N.Y.S.2d 788 (App. Div. 2003). These rulings exclude a significant portion of consumer claims against insurers.
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c. Utilities d. Post-sale acts (debt collection, repossession)	Strong	 Ins. Co., 25 A.D.3d 858, 807 N.Y.S.2d 448 (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.</i>, Hassett v. N.Y. Central Mut. Fire Ins. Co., 753 N.Y.S.2d 788 (App. Div. 2003). These rulings exclude a significant portion of consumer claims against insurers. No cases could be found applying New York's UDAP statute to a public utility. Based upon the court's interpretation of the exemption in N.Y. Gen. Bus. Law § 349(d), it appears that a claim could be brought at least if the utility's actions

		commerce." This is broad enough to include
		debt collection and other post-sale acts, and
		several courts have applied the statute to debt
		collection. See Fontana v. C. Barry &
		Associates, LLC, 2007 WL 2580490 (W.D.N.Y.
		2007) (awarding attorneys fees to plaintiffs on a
		UDAP claim for unfair debt collection
		practices); Cyphers v. Litton Loan Servicing,
		L.L.P., 503 F. Supp. 2d 547 (N.D.N.Y. 2007)
		(denying defendant's motion for summary
		judgment on UDAP claim for unfair debt
		collection practices). However, since the statute
		that is enforceable by consumers prohibits only
		deceptive acts, not unfair acts, it is of little use to
		consumers who have been subjected to abusive
		debt collection.
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. In
		Banks v. Consumer Home Mortg., Inc., 2003 WL
		21251584 (E.D.N.Y. 2003), a federal district
		court denied a defendant's motion to dismiss in a
		claim brought under the state UDAP statute
		regarding fraud perpetrated in connection with
		the purchase of a home. Also, in <i>Frazier v</i> .
		Priest, 141 Misc.2d 775, 534 N.Y.S.2d 846
		(N.Y. City Ct. 1988), a trial court applied New
		York's UDAP statute to leases. In <i>Canario v</i> .
		Gunn, 300 A.D.2d 332, 751 N.Y.S.2d 310
		(2002), however, an appellate court affirmed the
		grant of summary judgment to defendants in a
		UDAP claim for misrepresenting the size of a
		lot in a real estate transaction. The court held that
		the transaction did not have an impact on
		consumers or the public at large.

NORTH CAROLINA

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Strong	N.C. Gen. Stat. § 75-1.1(a)
or unconscionable acts		
b. Broadly prohibits	Strong	N.C. Gen. Stat. § 75-1.1(a)
deceptive acts		
c. Provides the state agency	Weak	
substantive rulemaking		
authority		
	1	
2. Lack of preconditions		
to public enforcement		
a. Allows public	Strong	
enforcement without		
requiring a showing of the		
defendant's intent or		
knowledge		
3. Available remedies		
a. Equitable relief	Strong	N.C. Gen. Stat. § 75-14
b. Restitution for	Strong	N.C. Gen. Stat. § 75-15.1
consumers		
c. Civil penalty amount for	Mixed	N.C. Gen. Stat. § 75-15.2 (up to \$5000 per
initial violations		violation if knowing)

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Undecided	North Carolina cases are mixed on whether reliance is required. In <i>Pearce v. American</i> <i>Defender Life Ins. Co.</i> , 343 S.E.2d 174, 180 (N.C. 1986), the North Carolina Supreme Court contrasted the elements of a UDAP claim to those of a fraud claim. It held that, while detrimental reliance need not be shown, in a UDAP case the consumer must make a similar showing - that he or she suffered actual injury as a proximate result of the defendant's

b. Does not require a	Strong	deceptive statement or misrepresentation. The court noted that this test is similar to the detrimental requirement element of a fraud claim. Likewise, in <i>Cullen v. Valley Forge</i> <i>Life Ins. Co.</i> , 589 S.E.2d 423 (N.C. App. 2003), the Court of Appeals of North Carolina held that "actual reliance is not a factor." The court reasoned that the focus of the statute is on the defendant the defendant's misrepresentation that induces a loss. However, a number of intermediate appellate decisions state flatly that reliance is required. <i>See Business Cabling, Inc. v. Yokeley</i> , 643 S.E.2d 63 (N.C. App. 2007); <i>Tucker v.</i> <i>Boulevard At Piper Glen LLC</i> , 564 S.E.2d 248 (N.C. App. 2002); <i>Forbes v. Par Ten Group,</i> <i>Inc.</i> , 394 S.E.2d 643 (N.C. App. 1990). These cases create an impediment for consumers.
showing of public interest or public impact	Suong	
c. Does not require pre- suit notice to the defendant	Strong	

2. Available remedies		
a. Compensatory damages	Strong	N.C. Gen. Stat. § 75-16
b. Multiple or punitive	Strong	N.C. Gen. Stat. § 75-16
damages		
c. 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.

3. Class actions		
a. Available under UDAP statute and other law	Strong	Class actions are allowed in North Carolina. In <i>Richardson v. Bank of America.</i> , 643 S.E.2d 410 (N.C. App. 2007), a North Carolina appellate court upheld a trial court's ruling to dismiss <i>some</i> plaintiffs from a class action based upon a UDAP claim due to the statute of
		limitations having run. <i>See also Nicholson v.</i> <i>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 Statute coverage		
4. Statute coverage a. Creditors and credit	Strong	Credit appears to be covered under North Carolina's UDAP statute. In <i>Richardson v.</i> <i>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 S[ingle] P[remium] C[redit] I[insurance] to Plaintiffs 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 N.C.G.S. § 75-1.1(a)." Although more on point for post-sale acts, in <i>Eley v.</i> <i>Mid/East Acceptance Corp.</i> , 614 S.E.2d 555 (N.C. App. 2005), an appellate court affirmed a judgment on a UDAP claim in favor of a truck owner against a lender who repossessed her truck, but refused to return her personal property. In <i>In re Kittrell</i> , 115 B.R. 873 (Bkrtcy.M.D.N.C. 1990), a bankruptcy court found a violation of North Carolina's UDAP statute where a credit union's forms were misleading and not self-explanatory.
b. Insurance	Strong	Insurance is covered under North Carolina's UDAP statute. In <i>Page v. Lexington Ins. Co.</i> , 628 S.E.2d 427 (N.C. App. 2006), a North Carolina appellate court reversed a trial judge's motion to dismiss a UDAP claim against an insurer. The court noted that an insurance company that fails to act reasonably and in good faith is in violation of the state's UDAP statute. <i>Id.</i> at 249, 429.
c. Utilities	Strong	Although North Carolina courts have not addressed the question, 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	N.C. Gen. Stat. §§ 75-50 to 75-56; <i>Eley v.</i> <i>Mid/East Acceptance Corp.</i> , 614 S.E.2d 555 (N.C. App. 2005) (applying UDAP statute to repossession).
e. Real estate	Strong	N.C. Gen. Stat. § 75-1.1(b) defines "commerce" broadly as all business activities. In <i>Willen v. Hewson</i> , 622 S.E.2d 187 (N.C. App. 2005), an appellate court upheld the award of attorney's fees for a UDAP claim

	regarding misrepresentations that were made about a property. Also, in <i>State Properties</i> , <i>LLC v. Ray</i> , 574 S.E.2d 180 (N.C. App. 2002), another appellate court held that judgment should have been granted to the plaintiff on a UDAP claim where a seller made misrepresentations regarding real estate to the plaintiff.
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NORTH DAKOTA

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Weak	
or unconscionable acts		
b. Broadly prohibits	Strong	N.D. Century Code §§ 51-15-02, 51-15-02.3.
deceptive acts		
c. Provides the state agency	Strong	N.D. Century Code § 51-15-05. State has
substantive rulemaking		adopted one rule, regulating retail price
authority		advertising.
	1	
2. Lack of preconditions		
to public enforcement		
a. Allows public	Weak	N.D. Century Code § 51-15-02, the statute's
enforcement without		basic substantive prohibition, requires a showing
requiring a showing of the		of intent that others rely on the
defendant's intent or		misrepresentation.
knowledge		
3. Available remedies		
a. Equitable relief	Strong	N.D. Century Code § 51-15-07
b. Restitution for	Strong	N.D. Century Code § 51-15-07
consumers	Suong	11.D. Contury Code § 51-15-07
c. Civil penalty amount for	Mixed	N.D. Century Code § 51-15-11 (up to \$5000 per
initial violations	MIACU	violation)
	1	

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Undecided	North Dakota courts have not reached this question, but no language in the statute implies that reliance is required.
b. Does not require a showing of public interest or public impact	Strong	
c. Does not require pre- suit notice to the defendant	Strong	
2. Available remedies		

a. Compensatory damages	Strong	N.D. Century Code § 51-15-09
b. Multiple or punitive	Strong	N.D. Century Code § 51-15-09 if knowing
damages	-	
c. Attorney fees for	Strong	N.D. Century Code § 51-15-09 if knowing
consumers		
3. Class actions	<u> </u>	
a. Available under UDAP statute and other law	Strong	Class actions under North Dakota's UDAP
statute and other law		statute appear to be available. <i>See Hanson v.</i> <i>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. Statute coverage		
a. Creditors and credit	Strong	Deceptive practices are prohibited by N.D.
		Century Code § 51-15-02 "in connection with
		the sale or advertisement of any merchandise."
		"Merchandise" is defined by § 51-15-01(3) as
		"objects, wares, goods, commodities, intangibles, real estate, charitable
		contributions, or services." This language is
		broad enough to encompass credit
		transactions, and there is no explicit statutory
		exemption for credit transactions. Although
		North Dakota courts have not ruled on the
		question, UDAP statutes are to be liberally
		construed, so it is likely that North Dakota
		courts will find that the statute applies to
b. Insurance	Strong	credit transactions.There is no explicit statutory exemption for
b. Insurance	Strong	insurance transactions, which should
		constitute the "sale" of a "service" or
		"intangible" as those terms are used in N.D.
		Century Code §§ 51-15-02 and 51-15-01(3).
		The statute was applied to an insurance
		transaction in Hanson v. Acceleration Life Ins.
		<i>Co.</i> , 1999 WL 33283345 (D. N.D. 1999)
		(declining to grant summary judgment for
		defendants on a state UDAP claim against an insurance agency)
c. Utilities	Strong	insurance agency). Deceptive practices are prohibited by N.D.
•. • • • • • • • • • • • • • • • • • •	Sublig	Century Code § 51-15-02 "in connection with
		the sale or advertisement of any merchandise."
		"Merchandise" is defined by § 51-15-01(3) as
		"objects, wares, goods, commodities,

		intangibles, real estate, charitable contributions, or services." This language is broad enough to encompass utility service. 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 covers post-sale acts since they would occur "in connection with the sale or advertisement of any merchandise." 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.

OHIO

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Strong	Ohio Rev. Code §§ 1345.02 (unfair acts and
or unconscionable acts		practices), 1345.03, 1345.031 (unconscionable
		acts and practices).
b. Broadly prohibits	Strong	Ohio Rev. Code § 1345.02
deceptive acts		
c. Provides the state agency	Strong	Ohio Rev. Code § 1345.05(B)(2). The Attorney
substantive rulemaking		General has adopted a number of rules.
authority		
2. Lack of preconditions		
to public enforcement		
a. Allows public	Strong	Knowledge (but not intent) is only required for
enforcement without		unconscionable acts. Ohio Rev. Code §
requiring a showing of the		1345.03).
defendant's intent or		
knowledge		
	1	
3. Available remedies		
a. Equitable relief	Strong	Ohio Rev. Code § 1345.07(A)(2)
b. Restitution for	Strong	Ohio Rev. Code § 1345.07(B)
consumers		
c. Civil penalty amount for	Strong	Ohio Rev. Code § 1345.07(D) (up to \$25,000 per
initial violations		violation if defendant violated a rule or a prior
		court decision)

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Strong	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

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		deceptive transaction occurs." Ohio courts award statutory damages without a showing of any damage. <i>Dantzig v. Sloe</i> , 684 N.E.2d 715, 718 (Ohio App. 1996).
b. Does not require a showing of public interest or public impact	Strong	
c. Does not require pre-suit notice to the defendant	Strong	
2. Available remedies		
a. Compensatory damages	Strong	Ohio Rev. Code § 1345.09(B). The state legislature weakened the compensatory damage provision in 2007, however, by capping non- economic damages at \$5000.
b. Multiple or punitive damages	Strong	Ohio Rev. Code § 1345.09(B)
c. Attorney fees for consumers	Strong	Ohio Rev. Code § 1345.09(F)
3. Class actions		
a. Available under UDAP statute and other law	Strong	Ohio Rev. Code § 1345.09(B)
1 Statuta aguaraga		
4. Statute coverage a. Creditors and credit	Weak	Because of Ohio Rev. Code § 1345.01(A), which excludes financial institutions and dealers in intangibles, lenders other than payday lenders, mortgage brokers, and nonbank mortgage lenders and their loan officers. Ohio Rev. Code § 1345.01(A), (K). In addition, assignees of nonbank mortgage lenders are not liable for the actions of their predecessors. Ohio Rev. Code § 1345.091.
b. Insurance	Weak	Ohio Rev. Code § 1345.01(A)
c. Utilities	Weak	Although the statute covers suppliers of propane, <i>Hanning v. Public Utilities Comm'n</i> , 712 N.E.2d 707 (Ohio 1999), public utilities are exempted by Ohio Rev. Code § 1345.01(A).
d. Post-sale acts (debt collection, repossession)	Strong	Ohio Rev. Code §§ 1345.02(A), 1345.03(A).
e. Real estate	Weak	Does not apply to pure real estate transactions. <i>Heritage Hills, Ltd. v. Deacon,</i> 551 N.E.2d 125 (Ohio 1990); <i>Brown v. Liberty Clubs, Inc.,</i> 543 N.E.2d 783 (Ohio 1989).

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair or unconscionable acts	Strong	Okla. Stat. Ann. tit. 15, §§ 753, 752(14)
b. Broadly prohibits deceptive acts	Strong	Okla. Stat. Ann. tit. 15, §§ 753, 752(13)
c. Provides the state agency substantive rulemaking authority	Weak	
2. Lack of preconditions		
to public enforcement		
a. Allows public enforcement without	Strong	
requiring a showing of the		
defendant's intent or		
knowledge		
3. Available remedies		
a. Equitable relief	Strong	Okla. Stat. Ann. tit. 15, § 756.1(A)(2)
b. Restitution for consumers	Strong	Okla. Stat. Ann. tit. 15, § 756.1(A)(3), (C)(2)
c. Civil penalty amount for	Strong	Okla. Stat. Ann. tit. 15, § 761.1(C) (up to
initial violations		\$10,000 per violation)

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Undecided	Since the statute itself does not include a reliance requirement, it is likely that Oklahoma courts will conclude that reliance is not required, but Oklahoma courts have not directly addressed this question.
b. Does not require a showing of public interest or public impact	Strong	
c. Does not require pre-	Strong	

suit notice to the defendant		
2. Available remedies		
a. Compensatory damages	Strong	Okla. Stat. Ann. tit. 15, § 761.1(A)
b. Multiple or punitive	Weak	
damages		
c. Attorney fees for	Strong	Okla. Stat. Ann. tit. 15, § 761.1(A)
consumers		
3. Class actions		
a. Available under UDAP	Strong	Nothing in the statute prohibits class actions.
statute and other law		
		-
4. Statute coverage		
a. Creditors and credit	Undecided	Okla. Stat. Ann. 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. However,
		Okla. Stat. Ann. tit. 15, § 754(2) excludes
		"actions or transactions regulated under laws
		administered by the Corporation Commission
		or any other regulatory body or officer acting

b. Insurance	Weak	credit contract was assigned). Oklahoma courts have held that the UDAP
		804, 808 (Okla. Civ. App. 1999) (UDAP statute applies to creditor to which consumer
		Tree Acceptance, Inc. v. Anderson, 981 P.2d
		exempt from UDAP coverage. See also Green
		by the plaintiff were not regulated and thus not
		reasoned that the specific acts complained of
		court overturned a trial court's dismissal of a UDAP claim against a bank. The court
		1077 (Okla. Civ. App. 1998), an appellate
		Brannon v. Boatmen's Nat. Bank, 976 P.2d
		as a blanket exemption for creditors. In
		Most courts, however, have not construed this
		other contexts. <i>See Estate of Hicks</i> , 92 P.3d 88 (Okla. 2004) (nursing homes exempt).
		Court has construed this exemption broadly in other contexts. See Estate of Highs 02 P 3d
		United States" The Oklahoma Supreme
		under statutory authority of this state or the
		or any other regulatory body or officer acting
		administered by the Corporation Commission
		"actions or transactions regulated under laws
		Okla. Stat. Ann. tit. 15, § 754(2) excludes

		statute can be applied to activities of insurers that are not covered by the state insurance laws. In <i>Conatzer v. American Mercury Ins.</i> <i>Co., Inc.</i> , 15 P.3d 1252 (Okla. Civ. App. 2000), the court held that an insurer could be liable under the UDAP statute for selling a rebuilt wreck that it had acquired in settlement of an accident claim, since the insurance code does not regulate this particular activity. <i>See also Brannon v. Munn</i> , 68 P.3d 224 (Okla. Civ. App. Div. 3,2002) (lack of privity did not prevent plaintiff from pursuing a UDAP claim against an insurer that sold a rebuilt wreck without disclosure). However, <i>Contazer</i> implies that the UDAP statute does not apply to activities that are covered by the state insurance laws. This view would exempt the great majority of insurers' activities.
c. Utilities	Weak	Okla. Stat. Ann. tit. 15, § 754(2) excludes "actions 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" In <i>Brice v. AT & T</i> <i>Communications, Inc.</i> , 32 P.3d 885 (Okla. Civ. App. 2001), a trial court found AT&T exempt from UDAP coverage because the Corporation Commission had authority over AT&T and its charges, and jurisdiction to resolve disputes. <i>See also Williams v. CSC Credit Services, Inc.</i> , 2007 WL 1959219 (N.D. Okla. 2007) (construing § 754(2) as creating blanket exemption for credit reporting activities); <i>Estate of Hicks ex rel. Summers v. Urban East,</i> <i>Inc.</i> , 92 P.3d 88, 94 (Okla. 2004) (nursing homes are well regulated under different legislation, and thus exempt from UDAP coverage).
d. Post-sale acts (debt collection, repossession)	Undecided	A number of federal district court decisions hold that the UDAP statute does not cover debt collection and other post-sale acts: <i>Terry</i> <i>v. Nuvell Credit Corp.</i> , 2007 WL 2746919 (W.D. Okla. 2007) (holding that unlawful repossession does not constitute a consumer transaction within the meaning of the act); <i>Oklahoma ex rel. Bd. of Regents of University</i> <i>of Oklahoma v. Greer</i> , 205 F. Supp. 2d 1273

		(W.D. Okla. 2001) (ruling that the state UDAP statute does not apply to third party defendants; in this case the 3 rd party defendants were 3 rd party debt collectors).; <i>Melvin v. Credit Collections, Inc.</i> , 2001 WL 34047943 (W.D. Okla. Apr. 5, 2001); <i>Melvin v. Nationwide Debt Recovery</i> , 2000 WL 33950122 (W.D. Okla. Aug. 24, 2000). 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." Nonetheless, they stand as a significant impediment to consumers who have been subjected to deceptive or abusive post-sale practices.
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.

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Strong	Or. Rev. Stat. § 646.607(1) (unconscionable
or unconscionable acts		tactics)
b. Broadly prohibits	Weak	Or. Rev. Stat. § 646.608(1)(u) prohibits "any
deceptive acts		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	Strong	Or. Rev. Stat. § 646.608(4). The Attorney
substantive rulemaking		General has adopted a number of rules.
authority		
2. Lack of preconditions		
to public enforcement		
a. Allows public	Strong	
enforcement without		
requiring a showing of the		
defendant's intent or		
knowledge		
3. Available remedies		
5. Available remetiles		
a. Equitable relief	Strong	Or. Rev. Stat. § 646.632
b. Restitution for	Strong	Or. Rev. Stat. § 646.636
consumers		
c. Civil penalty amount for	Strong	Or. Rev. Stat. § 646.642 - up to \$25,000 per
initial violations		violation if willful.

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Mixed	Reliance is required in some but not all circumstances. <i>Sanders v. Francis</i> , 561 P.2d 1003 (Or. 1971) (not required in case of non- disclosure); <i>Feitler v. Animation Celection</i> ,

		<i>Inc.</i> , 13 P.3d 1044 (Or. App. 2000) (reliance not always required, but reliance-in-fact must be shown when consumer bases claim on express representation).
b. Does not require a showing of public interest or public impact	Strong	
c. Does not require pre- suit notice to the defendant	Strong	
2. Available remedies		
a. Compensatory damages	Strong	Or. Rev. Stat. § 646.638(1)
b. Multiple or punitive damages	Strong	Or. Rev. Stat. § 646.638 allows punitive damages.
c. Attorney fees for consumers	Weak	Or. Rev. Stat. § 646.638(3) states that the court "may" award attorney fees to the prevailing party. In <i>Thomas v. U.S.</i> <i>Bank</i> , 2008 WL 974734 (D. Or. Apr. 8, 2008), the court required a consumer who lost a UDAP claim to pay \$45,000 to the business for its attorney fees, even though the court held that the consumer had filed the claim in good faith.
	1	
3. Class actions	<u></u>	O D $O(4) = 0.0000000000000000000000000000000000$
a. Available under UDAP statute and other law	Strong	Or. Rev. Stat. § 646.638(4) explicitly refers to class actions.
1 Statute coverage		
4. Statute coverage a. Creditors and credit	Undecided	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 ." <i>Haeger v. Johnson</i> , 548 P.2d 532 (Or. App. 1976) interpreted this language not to include consumer lending. While the Oregon Supreme Court has not yet ruled on the question, the intermediate appellate decision stands as an impediment to consumers seeking UDAP remedies for unfair or deceptive lending practices.
b. Insurance	Weak	Or. Rev. Stat. § 646.605(6)
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 "conduct in compliance with the orders or rules of, or a statute administered by a federal state or local governmental agency." Although Oregon courts have not addressed the question of how this statute applies to utility companies, the Oregon Supreme Court has construed this language not to provide a blanket exemption in the context of real estate transactions. <i>Rathgeber v. James Hemenway</i> , <i>Inc.</i> , 69 P.3d 710 (Or. 2003). <i>Accord</i> , <i>Hinds v.</i> <i>Paul's Auto Werkstatt</i> , <i>Inc.</i> , 810 P.2d 874 (Or. App. 1991). In light of these decisions and the general rule that UDAP statutes are to be liberally interpreted, it is unlikely that Oregon courts will find that utilities are exempt.
d. Post-sale acts (debt collection, repossession)	Strong	Or. Rev. Stat. § 646.607(1) specifically prohibits unconscionable tactics in "collection or enforcement of an obligation," and Or. Rev. Stat. § 646.639 includes specific prohibitions.
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</i> <i>Hemenway, Inc.</i> , 69 P.3d 710 (Or. 2003).

PENNSYLVANIA

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair or unconscionable acts	Mixed	73 Pa. Stat. § 201-3 broadly prohibits deception and 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 only forbids a few relatively narrow examples of unfair acts.
b. Broadly prohibits deceptive acts	Mixed	73 Pa. Stat. § 201-2(4) has a broad prohibition of deception. The intermediate appellate court that handles appeals from cases brought by the Attorney General has construed this provision according to its terms. <i>Com. v. Parisi</i> , 873 A.2d 3 (Pa. Commw. 2005). However, the intermediate appellate court that handles appeals from cases brought by private parties has read into it a requirement that the consumer prove common law fraud. <i>See, e.g., Feeney v. Disston Manor Personal Care Home</i> , 849 A.2d 590 (Pa. Super. 2004).
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. Lack of preconditions		
to public enforcement		
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Strong	
3. Available remedies		
a. Equitable relief	Strong	73 Pa. Stat. § 201-4.
b. Restitution for consumers	Strong	73 Pa. Stat. § 201-4.1.
c. Civil penalty amount for initial violations	Weak	73 Pa. Stat. § 201-8(b) (allowed for willful violations; \$1000 per violation, \$3000 per violation if victim is age 60 or older).

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Weak	<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).
b. Does not require a showing of public interest or public impact	Strong	
c. Does not require pre- suit notice to the defendant	Strong	
2. Available remedies		
a. Compensatory damages	Strong	73 Pa. Stat. § 201-9.2(a).
b. Multiple or punitive damages	Strong	73 Pa. Stat. § 201-9.2(a).
c. Attorney fees for consumers	Strong	73 Pa. Stat. § 201-9.2(a).
3. Class actions		
a. Available under UDAP statute and other law	Strong	
1 Statuta agrange		
4. Statute coverage a. Creditors and credit	Strong	Pennsylvania Bankers Ass'n v. Pennsylvania Bur. of Consumer Protection, 427 A.2d 730 (Pa. Commw. 1981); Safeguard Investment Corp. v. Commonwealth by Colville, 404 A.2d 720 (Pa. Commw. 1979).
b. Insurance	Strong	Culbreth v. Lawrence J. Miller, Inc., 477 A.2d 491 (Pa. Super. 1984)
c. Utilities	Strong	<i>Commonwealth by Zimmerman v. Bell</i> <i>Telephone Co.</i> , 551 A.2d 602 (Pa. Commw. 1988).
d. Post-sale acts (debt collection, repossession)	Strong	Pennsylvania Retailers Ass'n v. Lazin, 426 A.2d 712 (Pa. Commw. 1981).
e. Real estate	Strong	<i>Gabriel v. O'Hara</i> , 534 A.2d 488 (Pa. Super. 1987).

RHODE ISLAND

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Strong	R.I. Gen. Laws §§ 6-13.1-1(6)(xiii), 6-13.1-2
or unconscionable acts		
b. Broadly prohibits	Strong	R.I. Gen. Laws §§ 6-13.1-1(6)(xii), (xiii), (xiv),
deceptive acts		6-13.1-2
c. Provides the state agency	Strong	R.I. Gen. Laws § 6-13.1-7(c). State has adopted
substantive rulemaking		rules only regarding time shares and odometer
authority		tampering.
	I	
2. Lack of preconditions		
to public enforcement		
a. Allows public	Strong	
enforcement without		
requiring a showing of the		
defendant's intent or		
knowledge		
	1	
3. Available remedies		
a. Equitable relief	Strong	R.I. Gen. Laws § 6-13.1-5(a)
b. Restitution for	Strong	R.I. Gen. Laws § 6-13.1-5(c)
consumers		
c. Civil penalty amount for	Weak	Rhode Island's UDAP statute does not authorize
initial violations		civil penalties for initial violations.

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Undecided	There are no definitive rulings from Rhode Island courts.
b. Does not require a showing of public interest or public impact	Strong	
c. Does not require pre- suit notice to the defendant	Strong	
2. Available remedies		

a. Compensatory damages	Strong	R.I. Gen. Laws § 6-13.1-5.2(a)
b. Multiple or punitive	Strong	R.I. Gen. Laws § 6-13.1-5.2 allows punitive
damages	240118	damages.
c. Attorney fees for	Strong	R.I. Gen. Laws § 6-13.1-5.2(d) says "In any
consumers	buong	action brought by a person under this section,
consumers		the court may award, <i>in addition to the relief</i>
		provided in this section, 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 could 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.
3. Class actions	<u> </u>	
a. Available under UDAP	Strong	R.I. Gen. Laws § 6-13.1-5.2(b)
statute and other law		
4. Statute coverage	XX 7 1	
a. Creditors and credit	Weak	R.I. Gen. Laws § 6-13.1-4 states that the law
		does not apply to "actions or transactions
		permitted under laws administered by the
		department of business regulation or other
		regulatory body or officer acting under
		statutory authority of this state or the United
		States." In Chavers v. Fleet Bank, 844 A.2d
		666 (R.I. 2004), the R.I. Supreme Court
		interpreted this language as a blanket
		exclusion of creditors.
b. Insurance	Weak	Insurance is not covered under Rhode Island's
		UDAP statute. The court made this clear in
		State v. Piedmont Funding Corp., 382 A.2d
		819, 822 (R.I. 1978), noting that insurers are
		exempt from the statute because they are
		"clearly subject to the control of governmental
		agencies on both the state and federal level."
c. Utilities	Weak	In Perron v. Treasurer of City of Woonsocket,
		403 A.2d 252 (R.I. 1979), the Rhode Island
		Supreme Court held that the UDAP statute
		applied to a dispute about hooking up to a
		water line that was operated by a private party
		and not regulated by the public utilities
		and not regulated by the public utilities

		commission. However, the opinion suggests that if the issues had fallen under the public utilities commission's authority, the court would have dismissed the case.
d. Post-sale acts (debt collection, repossession)	Strong	 R. I. Gen. Laws § 6-13.1-2 prohibits unfair or deceptive acts or practices "in the conduct of any trade or commerce." "Trade or commerce" is broadly defined by R.I. Gen. Laws § 6-13.1-1(5) 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" These terms appear to be broad enough to cover post-sale practices. While the Rhode Island courts have interpreted the statutory exemption for regulated industries at R.I. Gen. Laws § 6-13.1-4 extremely broadly, post-sale acts such as debt collection and repossession may still be covered. Debt collectors and repossession agents in Rhode Island are not licensed or subject to oversight by any regulatory body.
e. Real estate	Weak	"Trade or commerce" is defined by R.I. Gen. Laws § 6-13.1-1(5) to include real estate, but the state Supreme Court has interpreted another section of the statute to exclude real estate licensees. In <i>Doyle v. Chihoski</i> , 443 A.2d 1243 (R.I. 1982), the Rhode Island Supreme Court, discussing a suit by a real estate broker suing to collect his fee, cited <i>State v. Piedmont Funding Corp.</i> , 119 R.I. 695, 382 A.2d 819 (R.I. 1978), with approval, for the proposition that "the Deceptive Trade Practices Act does not apply to any transactions or actions that are subject to the supervision of either Rhode Island's Department of Business Regulation or some federal regulatory body or official." Since real estate brokers are covered by the Department of Business Regulation under R.I. Gen. Laws 1956, § 5-20.5-1, the court upheld the trial court's dismissal of the plaintiff's suit in that case. Another issue is that R. I. Gen. Laws § 6-13.1-5.2(a) affords a private cause of action only to a person who purchases or leases goods or services. Although courts in a

number of other states have construed similar
language to cover real estate transactions,
there are no Rhode Island decisions addressing
this question.

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Strong	S.C. Code § 39-5-20(a)
or unconscionable acts	-	
b. Broadly prohibits	Strong	S.C. Code § 39-5-20(a)
deceptive acts	_	
c. Provides the state agency	Weak	S.C. Code § 39-5-80 allows the AG to
substantive rulemaking		"promulgate such rules and prescribe such
authority		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.
	1	
2. Lack of preconditions		
to public enforcement		
a. Allows public	Strong	
enforcement without		
requiring a showing of the		
defendant's intent or		
knowledge		
3. Available remedies		
a. Equitable relief	Strong	S.C. Code § 39-5-50(a)
b. Restitution for	Strong	S.C. Code § 39-5-50(b)
consumers		
c. Civil penalty amount for	Mixed	S.C. Code § 39-5-110(a) – up to \$5000 per
initial violations		violation if willful
1		

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. 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</i>

b. Does not require a showing of public interest or public impact	Weak	 <i>Charleston, SC v. Hotels.com, LP</i>, 487 F. Supp. 2d 676 (D.S.C. 2007) ("1) that the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce, (2) that the plaintiff suffered actual, ascertainable damages as a result of the defendant's unfair or deceptive act, and (3) that the unfair or deceptive act had an adverse impact on the public interest"). In light of this list of the required elements, the absence of any negative case law, and the rule that UDAP statutes are to be liberally construed, it is likely that South Carolina courts will not require reliance, but at present the courts have not reached the question. <i>Daisy Outdoor Advertising Co. v. Abbott</i>, 473 S.E.2d 47 (S.C. 1996) and other South Carolina Supreme Court decisions 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.
c. Does not require pre- suit notice to the defendant	Strong	
2. Available remedies		
a. Compensatory damages	Strong	S.C. Code § 39-5-140(a).
b. Multiple or punitive damages	Strong	S.C. Code § 39-5-140(a) if willful or knowing
c. Attorney fees for consumers	Strong	S.C. Code § 39-5-140(a)
		1
3. Class actions a. Available under UDAP	W/acl-	S.C. Code & 20.5.140 allows with a star bar
a. Available under UDAP statute and other law	Weak	S.C. Code § 39-5-140 allows suit only by consumer who is not acting "in a representative capacity"
1 Statute coverage		
4. Statute coverage a. a. Creditors and credit b.	Strong	"Trade" and "commerce" are defined broadly by S.C. Code § 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 § 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 U.S. or "actions or transactions permitted by any other South Carolina State law," but this language has not been construed as a blanket exemption for creditors. In <i>Beattie v. Nations</i> <i>Credit Financial Services Corp.</i> , 69 Fed. Appx. 585 (4 th Cir. 2003), the Fourth Circuit construed this exemption narrowly. The court, citing <i>Ward v. Dick Dyer & Assocs., Inc.</i> , 403 S.E.2d 310, 312 (S.C. 1991), 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. The <i>Beattie</i> court found that pursuing "collection and foreclosure activities on accounts purportedly satisfied by [a lost mortgage statement] affidavit" was not generally permitted by a regulatory agency, and thus, the defendant was not exempt from UDAP coverage. <i>See also</i> <i>McTeer v. Provident Life and Acc. Ins.</i> , 712 F. Supp. 512 (D.S.C. 1989) (challenge to computation of interest on mortgage loans does not fall within the exemption).
b. Insurance	Weak	Insurance appears to be exempted from UDAP coverage in South Carolina by S.C. Code § 39- 5-40, which states: "this article does not supersede or apply to unfair trade practices covered and regulated under" specified state insurance laws. In <i>Trustees of Grace Reformed</i> <i>Episcopal Church v. Charleston Ins. Co.</i> , 868 F. Supp. 128, 132 (D.S.C. 1994), a federal district court held that S.C. Code "§ 39-5- 40(c) exempts from the coverage of SCUTPA all unfair trade practices in the business of insurance." Accord Colonial Life & Acc. Ins. <i>Co. v. American Family Life Assur. Co. of</i> <i>Columbus</i> , 846 F. Supp. 454 (D.S.C. 1994).
c. Utilities	Strong	South Carolina courts do not appear to interpret S.C. Code § 39-5-40(a) as a blanket exemption for utility companies. In <i>Andrade v</i> .

		Johnson, 345 S.C. 216, 546 S.E.2d 665 (S.C. App. 2001), rev'd on other grounds, 356 S.C. 238, 588 S.E.2d 588 (S.C. 2003), a South Carolina 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	Post-sale acts appear to be covered under South Carolina's UDAP statute. In <i>In re</i> <i>Daniel</i> , 137 B.R. 884 (D.S.C. 1992), a federal district court found no error in a ruling that the statute covers debt collection activities. And in <i>Craig v. Andrew Aaron & Associates, Inc.</i> , 947 F. Supp. 208 (D.S.C. 1996), a federal district court refused to grant a defendant's motion for summary judgment on a UDAP claim where the defendant had made harassing collection calls to the plaintiff.
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.

SOUTH DAKOTA

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair or unconscionable acts	Weak	
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 below).
c. Provides the state agency substantive rulemaking authority	Weak	
2. Lack of preconditions to public enforcement		
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."
3. Available remedies		
a. Equitable relief	Strong	S.D. Codified Laws § 37-24-23
b. Restitution for consumers	Strong	S.D. Codified Laws § 37-24-29
c. Civil penalty amount for initial violations	Weak	S.D. Codified Laws § 37-24-27 (up to \$2000 per violation if intentional)

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require	Strong	S.D. Codified Laws § 37-24-31 allows

reliance	Strong	consumer who is "adversely affected" to sue. In <i>Nygaard v. Sioux Valley Hospitals &</i> <i>Health System</i> , 731 N.W.2d 184, 196 (S.D. 2007), the Supreme Court of South Dakota 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 came to this conclusion by construing the language in S.D. Codified Laws § 37-24-31, which provides for a private cause of action when one suffers "as a <i>result</i> of such act or practice." (emphasis added). Also noteworthy is that the court in <i>Nygaard</i> 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.
b. Does not require a showing of public interest or public impact	Strong	
c. Does not require pre- suit notice to the defendant	Strong	
2. Available remedies		
a. Compensatory damages	Strong	S.D. Codified Laws § 37-24-31
b. Multiple or punitive damages	Weak	
c. Attorney fees for consumers	Weak	
3. Class actions	C 4	
a. Available under UDAP statute and other law	Strong	Although no cases could be found approving UDAP class actions in South Dakota, there is no prohibition of class actions in the statute.

4. Statute coverage		
a. Creditors and credit	Strong	South Dakota courts have not addressed the question whether the state UDAP statute covers credit 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 § 37-24-1(7) to include intangibles and services, which would appear to

		encompass credit. The private cause of action at S.D. Codified Laws § 37-24-31 is not worded in a way that could be construed to exclude cases based on credit transactions. 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 credit transactions.
b. Insurance	Strong	South Dakota courts have not addressed the question whether the state UDAP statute covers 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 § 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 state UDAP statute covers utilities. 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 permitted" under state or federal laws, regulations, or interpretations. 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)	Strong	S.D. Codified Laws § 37-24-6(1) prohibits deceptive acts "in connection with the sale or advertisement of any merchandise." Although South Dakota courts have not addressed this issue, collection is likely to be considered to be "in connection with" the sale.

e. Real estate	Undecided	South Dakota courts have not addressed the question whether the state UDAP statute covers real estate. 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. The other prohibitions of § 37-24-6 all either apply just to merchandise or just to some specific industry, e.g. hotel rooms or discount drug cards. 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.
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TENNESSEE Tenn. Code Ann. §§ 47-18-101 through 47-18-125 Consumer Protection Act

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Strong	Tenn. Code § 47-18-104(a)
or unconscionable acts		
b. Broadly prohibits	Strong	Tenn. Code § 47-18-104(a)
deceptive acts		
c. Provides the state agency	Weak	Tenn. Code § 47-18-5002(3) allows the state
substantive rulemaking		agency to promulgate procedural rules but not
authority		substantive rules.
	I	
2. Lack of preconditions		
to public enforcement		
a. Allows public	Strong	
enforcement without		
requiring a showing of the		
defendant's intent or		
knowledge		
	1	
3. Available remedies		
a. Equitable relief	Strong	Tenn. Code § 47-18-108(a)
b. Restitution for	Strong	Tenn. Code § 47-18-108(b)(1)
consumers		
c. Civil penalty amount for	Weak	Tenn. Code § 47-18-108(b)(3) - \$1000 per
initial violations		violation

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Strong	"[I]n TCPA cases involving misrepresentation, a plaintiff is not required to show reliance upon a misrepresentation in order to maintain a cause of action." <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." <i>Id. Fleming</i> , in noting

	-	that reliance is not required, cited <i>Messer</i> <i>Griesheim Indus., Inc. d/b/a MG Indust. v.</i> <i>Cryotech of Kingsport, Inc.,</i> 131 S.W.3d 457, 469 (Tenn. Ct. App. 2003), which cited <i>Harvey v. Ford Motor Credit Co.,</i> 1999 WL 486894 (Tenn. App. 1999).
b. Does not require a showing of public interest or public impact	Strong	
c. Does not require pre- suit notice to the defendant	Strong	
2. Available remedies		
a. Compensatory damages	Strong	Tenn. Code § 47-18-109(a)(1)
b. Multiple or punitive damages	Strong	Tenn. Code § 47-18-109(a)(3) if willful or knowing
c. Attorney fees for consumers	Strong	Tenn. Code § 47-18-109(e)
3. Class actions		
a. Available under UDAP statute and other law	Weak	Tenn. Code § 47-18-109(a)(1) allows 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</i> <i>Truck, Inc.</i> , 249 S.W.3d 301 (Tenn. 2008).
4. Statute coverage a. Creditors and credit	Undecided	Tenn. Code § 47-18-111(a)(1) and (3) exclude "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" and "Credit terms of a transaction which may be otherwise subject to the provisions of this part, except insofar as the Tennessee Equal Consumer Credit Act of 1974, compiled in part 8 of this chapter may be applicable." In <i>Hathaway v. First Family Financial Services,</i> <i>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

b. Insurance	Strong	banking exemption, holding that each case must be examined on its own facts. In <i>Smith</i> <i>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. This decision is entitled to less weight than the Tennessee Supreme Court's interpretation of a state statute, however. In summary, although these exemptions exclude many aspects of credit transactions, they do not amount to a blanket exemption. <i>Myint v. Allstate Ins. Co.</i> , 970 S.W.2d 920 (Tenn. 1998); <i>Gaston v. Tennessee Farmers</i>
c. Utilities	Undecided	<i>Mut. Ins. Co.</i> , 120 S.W.3d 815 (Tenn. 2003). Tennessee cases have not addressed coverage of utilities. The definitions of "trade," "commerce," "consumer transaction," and "services" are clearly broad enough to encompass utility service, and there is no specific exemption for utility companies. Tenn. Code § 47-18-111 does exclude "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," but 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</i> <i>Financial Services, Inc.</i> , 1 S.W.3d 634, 642-3
d. Post-sale acts (debt collection, repossession)	Weak	(Tenn. 1999). <i>Pursell v. First American Nat. Bank</i> , 937 S.W.2d 838 (Tenn. 1996) (repossession not
e. Real estate	Strong	covered). The definition of consumer at Tenn. Code §

47-18-103(2) includes real estate. So does the definition of "trade," "commerce," and "consumer transaction" at Tenn. Code § 47-18-103(11). 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 LIDAP statute Tenn. Code § 47-
section of the UDAP statute, Tenn. Code § 47-
18-104(b)(42), has specific prohibitions that
relate to real estate sales.

TEXAS

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Strong	Tex. Bus. & Com. Code §§ 17.45(5), 17.50(a)(3)
or unconscionable acts		
b. Broadly prohibits	Mixed	Tex. Bus. & Com. Code § 17.46(a). But note
deceptive acts		that Tex. Bus. & Com. Code § 17.46(d) and
		17.50(a)(1)(A) make the broad general definition
		inapplicable to private suits.
c. Provides the state agency	Weak	
substantive rulemaking		
authority		
	T	
2. Lack of preconditions		
to public enforcement		
a. Allows public	Strong	
enforcement without		
requiring a showing of the		
defendant's intent or		
knowledge		
	1	
3. Available remedies		
a. Equitable relief	Strong	Tex. Bus. & Com. Code § 17.47(a)
b. Restitution for	Strong	Tex. Bus. & Com. Code § 17.47(d)
consumers		~ ` ` ` ` ` ` ` ` ` ` ` ` ` ` ` ` ` ` `
c. Civil penalty amount for	Strong	Tex. Bus. & Com. Code § 17.47(c) (up to
initial violations		\$20,000 per violation)
		·

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Weak	Tex. Bus. & Com. Code § 17.50(a)(1)(B)
b. Does not require a showing of public interest or public impact	Strong	
c. Does not require pre-suit notice to the defendant	Weak	Tex. Bus. & Com. Code § 17.505

2. Available remedies		
a. Compensatory damages	Strong	Tex. Bus. & Com. Code § 17.50(b)(1), (3)
b. Multiple or punitive	Strong	Tex. Bus. & Com. Code § 17.50(b)(1) if
damages	U	knowing
c. Attorney fees for	Strong	Tex. Bus. & Com. Code § 17.(50(d)
consumers		
3. Class actions		
a. Available under UDAP	Strong	Tex. Bus. & Com. Code § 17.501. See also
statute and other law		Bally Total Fitness Corp. v. Jackson, 53 S.W.3d
		352 (Tex. 2001) (denying motion to decertify a
		class with claims under the state's UDAP
		statute).
A 54.4 A	1	
4. Statute coverage	M: 1	
a. Creditors and credit	Mixed	Credit is covered but only if it was used to
		purchase goods or services. <i>Riverside Nat'l</i> <i>Bank v. Lewis</i> , 603 S.W.2d 169 (Tex. 1980).
b. Insurance	Strong	See Progressive County Mut. Ins. Co. v. Boyd,
b. Insurance	Suong	177 S.W.3d 919 (Tex. 2005); Stewart Title Guar.
		<i>Co. v. Aiello</i> , 941 S.W.2d 68, 72 (Tex. 1997).
c. Utilities	Strong	See Bailey v. Gulf States Utilities Co., 27 S.W.3d
c. Oundes	Suong	713, 718 (Tex. App. 2000).
d. Post-sale acts (debt	Strong	Tex. Bus. & Com. Code § 17.45(6), defining
collection, repossession)	0	trade or commerce, is broad enough to include
_		post-sale acts. Prohibitions against deception
		and unconscionability are also broad. In EMC
		Mortg. Corp. v. Jones, 252 S.W.3d 857 (Tex.
		App. 2008), a Texas appellate court upheld an
		award for damages based in part on a UDAP
		claim for unreasonable collection practices.
		Additionally, in Kheir v. Progressive County
		Mut. Ins. Co., 2006 WL 1594031 (Tex. App.
		2006), an appellate court upheld an award for
		damages under a UDAP claim for wrongful
	, C.	repossession.
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. Nothing in the private cause of action
		section, Tex. Bus. & Com. Code § 17.50, would
		exclude real estate transactions.

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Strong	Utah Code Ann. § 13-11-5
or unconscionable acts		
b. Broadly prohibits	Strong	Utah Code Ann. § 13-11-4(1)
deceptive acts		
c. Provides the state agency	Strong	Utah Code Ann. § 13-11-8. The state has
substantive rulemaking		adopted several rules.
authority		
2. Lack of preconditions		
to public enforcement	<u> </u>	
a. Allows public enforcement without	Strong	
requiring a showing of the		
defendant's intent or		
knowledge		
3. Available remedies		
a. Equitable relief	Strong	Utah Code Ann. § 13-11-17(1)(b)
b. Restitution for	Strong	Utah Code Ann. § 13-11-17(1)(c), (2)(b)
consumers		
c. Civil penalty amount for	Weak	Utah Code Ann. § 13-11-17(4) - \$2,500 per
initial violations		violation

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. 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. <i>See 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.
b. Does not require a showing of public interest	Strong	

or public impact		
c. Does not require pre-	Strong	
suit notice to the defendant	Suong	
2. Available remedies		
a. Compensatory damages	Strong	Utah Code Ann. § 13-11-19(2)
b. Multiple or punitive	Weak	
damages		
c. Attorney fees for	Strong	Utah Code Ann. § 13-11-19(5)
consumers		
3. Class actions		
a. Available under UDAP	Strong	Utah Code Ann. §§ 13-11-19(3), (4), 13-11-20
statute and other law		specifically provide for UDAP class actions.
4. Statute coverage		
a. Creditors and credit	Mixed	Utah Code Ann. § 13-11-3(2) defines
		"consumer transaction" to include "oral or
		written transfer or distribution of property."
		This is broad enough to include credit. Utah
		Code Ann. § 13-11-22(1)(a) exempts "An 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,"
		rather than to "transactions," and the word
		"specifically," make this a fairly narrow exemption. However, Utah Code Ann. § 13-
		11-22(1)(d) exempts "Credit terms of a
		transaction otherwise subject to this act."
b. Insurance	Weak	Utah Code Ann. § 13-11-3(2)(a) excludes
b. Insurance	WCak	insurance from the definition of "consumer
		transaction."
c. Utilities	Weak	Utah Code Ann. § 13-11-22(1)(e).
d. Post-sale acts (debt	Strong	Utah Code Ann. \S 13-11-4(1) says that a
collection, repossession)	240118	deceptive act or practice is a violation whether
·····, ···, ···,		it occurs before, during, or after the
		transaction. Utah Code Ann. § 13-11-5(1)
		says the same thing for unconscionable acts.
		See Heard v. Bonneville Billing and
		<i>Collections</i> , 216 F.3d 1087 (10 th Cir. 2000)
		("The district court did not err in concluding
		[a debt collector's] practice was both
		deceptive and unconscionable in violation of
		both Utah Code Ann. §§ 13-11-4 and 5")
		(quotations and citations omitted).

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. <i>See Iadanza v.</i> <i>Mather</i> , 820 F. Supp. 1371 (D. Utah 1993) (ruling that real estate transactions are covered under the statute based upon the statute's
		language, the definition of property, and
		analogies to other acts including the FTC Act).

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Strong	Vt. Stat. Ann. tit. 9, § 2453(a)
or unconscionable acts		
b. Broadly prohibits	Strong	Vt. Stat. Ann. tit. 9, § 2453(a)
deceptive acts		
c. Provides the state agency	Strong	Vt. Stat. Ann. tit. 9, § 2453(c). The state has
substantive rulemaking		adopted a number of rules.
authority		
	1	
2. Lack of preconditions		
to public enforcement		
a. Allows public	Strong	
enforcement without		
requiring a showing of the		
defendant's intent or		
knowledge		
	1	
3. Available remedies		
a. Equitable relief	Strong	Vt. Stat. Ann. tit. 9, § 2458
b. Restitution for	Strong	Vt. Stat. Ann. tit. 9, § 2458(b)(2)
consumers		
c. Civil penalty amount for	Strong	Vt. Stat. Ann. tit. 9, § 2458(b)(1) - up to \$10,000
initial violations		per violation

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. 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. This language implies that reliance is not always a necessary component of proof of causation. <i>Lalande Air & Water Corp. v. Pratt</i> , 795 A.2d 1233 (Vt. 2002) left the question open. Since UDAP statutes are to be liberally construed, it is likely that Vermont courts will conclude that

		reliance is not always required.
b. Does not require a	Strong	Tenance is not always required.
showing of public interest	Suong	
or public impact		
c. Does not require pre-suit	Strong	
notice to the defendant	Suong	
2. Available remedies		
a. Compensatory damages	Strong	Vt. Stat. Ann. tit. 9, § 2461(b)
b. Multiple or punitive	Strong	Vt. Stat. Ann. tit. 9, § 2461(b) - treble damages
damages	0	
c. Attorney fees for	Strong	Vt. Stat. Ann. tit. 9, § 2461(b)
consumers		, , , , , , , , , , , , , , , , , , , ,
	•	
3. Class actions		
a. Available under UDAP	Strong	Class actions are allowed under Vermont's
statute and other law		UDAP statute. In Elkins v. Microsoft Corp., 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 allowed the case to
		proceed if class actions were not allowed.
4. Statute coverage		
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 Gramatan Home Investors Corp. v. Starling,
		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.
		Since UDAP statutes are to be liberally
		construed, it is likely that Vermont courts will
		find that the statute covers credit transactions.
b. Insurance	Weak	In Greene v. Stevens Gas Service, 858 A.2d 238
		(Vt. 2004), the Supreme Court of Vermont
		declined to rule on whether the state UDAP
		statute applies to insurers; the court instead
		upheld the dismissal a UDAP claim against an

		insurer because no loss was shown. However, still on the books is <i>Wilder v. Aetna Life & Cas.</i> <i>Ins. Co.</i> , 433 A.2d 309 (Vt. 1981), which explicitly held that insurance is not covered under Vermont's UDAP statute. It is worthwhile to note that <i>Greene</i> discussed <i>Wilder</i> , and referenced amicus briefs filed by the attorney general, which argued that <i>Wilder</i> should be
		overturned, and that the 1985 amendments to the statute sufficiently broadened the scope of the statute to cover insurance. However, no cases could be found applying the UDAP statute to insurance. <i>Cf. Ransome v. Metropolitan Life Ins. Co.</i> , 2005 WL 2030754 (D. Vt. 2005) (granting summary judgment for defendants on a claim brought under the state UDAP statute, finding that the defendants had not engaged in any fraudulent act). 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
c. Utilities	Strong	insurance.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 itself, Vt. Stat. Ann. tit. 9, § 2461(b), and the Attorney General's rules, Vt. Consumer Fraud Rules, Vt. Code R. 06 031 011 CF 111, specifically address propane sales.
d. Post-sale acts (debt collection, repossession)	Strong	Although Vermont courts have not yet addressed the question of coverage of post-sale acts, 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. 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 Fraud Rules, Vt. Code R. 06 031 004 CF 104.
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 landlord-tenant transactions. <i>See, e.g., Bisson v. Ward</i> , 628 A.2d 1256 (Vt. 1993).

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Weak	
or unconscionable acts		
b. Broadly prohibits	Strong	Va. Code Ann. § 59.1-200(A)(14)
deceptive acts		
c. Provides the state agency	Weak	
substantive rulemaking		
authority		
2 Look of mean differen		
2. Lack of preconditions to public enforcement		
^	Strong	Vo. Codo \$ 50 1 207.
a. Allows public enforcement without	Strong	Va. Code § 59.1-207;
requiring a showing of the		
defendant's intent or		
knowledge		
3. Available remedies		
a. Equitable relief	Strong	Va. Code Ann. § 59.1-203
b. Restitution for	Strong	Va. Code Ann. § 59.1-205
consumers		
c. Civil penalty amount for	Weak	Va. Code Ann. § 59.1-206 (up to \$2500 per
initial violations		willful violation)

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Weak	A number of courts have held that reliance is required in Virginia. <i>Key v. Lewis Aquatech</i> <i>Pool Supply, Inc.</i> , 58 Va. Cir. 344, 2002 WL 920936 (Va. Cir. Ct. 2002) (denying plaintiff's motion for judgment against defendants, because plaintiff failed to show, among other things, that he relied on defendant's comments); <i>Cooper v. GGGR Investments,</i> <i>LLC</i> , 334 B.R. 179 (E.D. Va. 2005) (ruling

b. Does not require a showing of public interest or public impact	Strong	that, based on Virginia's common law, reliance is required); <i>Padin v. Oyster Point</i> <i>Dodge</i> , 397 F. Supp. 2d 712 (E.D. Va. 2005) (plaintiff must prove reliance to sustain a Virginia UDAP claim). While the Virginia Supreme Court may ultimately disagree with these decisions, at present they stand as an impediment to consumers.
c. Does not require pre- suit notice to the defendant	Strong	
2. Available remedies		
a. Compensatory damages	Strong	Va. Code Ann. § 59.1-204(A)
b. Multiple or punitive damages	Strong	Va. Code Ann. § 59.1-204(A) if willful
c. Attorney fees for consumers	Strong	Va. Code Ann. § 59.1-204(B)
3. Class actions		
a. Available under UDAP statute and other law	Weak	Virginia does not allow class actions. <i>See</i> <i>Pearsall v. Va. Racing Comm'n</i> , 494 S.E.2d 879, 883 (Va. App. 1998).
4. Statute coverage		
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." Va. Code Ann. § 56-1 defines "public service corporation" or "public service company" to include gas, pipeline, electric light, heat, power and water supply companies, sewer

	companies telephone companies telegrent
	companies, telephone companies, telegraph
	companies, and all persons authorized to
	transport passengers or property as a common
	carrier, with a limited exception for municipal
T T 1 • 1 1	and other publicly-owned utilities.
Undecided	Virginia courts have not ruled on this question,
	but Va. Code Ann. § 59.1-200's prohibitions
	apply to acts "in connection with" a consumer
	transaction, which would seem to cover post-
	sale matters. However, the exclusion at Va.
	Code § 59.1-199(E) 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.
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 Holland v. MBM Sales, Inc., 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. See also Messer v. Shannon &
	Luchs Co., 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") (citing Messer v.
	Re/Max Properties, Inc., 15 Va. Cir. 15, 1985
	WL 306771 (Va. Cir. Ct. 1985). However,
	real estate brokers, salespersons, and rental
	location agents who are licensed under Va.
	Code Ann. § 54.1-2100 et seq. are excluded by
	Va. Code Ann. § 59.1-199(F).
	Undecided

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Strong	Wash. Rev. Code § 19.86.020
or unconscionable acts		
b. Broadly prohibits	Strong	Wash. Rev. Code § 19.86.020
deceptive acts		
c. Provides the state agency	Weak	
substantive rulemaking		
authority		
	1	
2. Lack of preconditions		
to public enforcement		
a. Allows public	Strong	
enforcement without		
requiring a showing of the		
defendant's intent or		
knowledge		
3. Available remedies		
5. Available reliteutes		
a. Equitable relief	Strong	Wash. Rev. Code § 19.86.080(1)
b. Restitution for	Strong	Wash. Rev. Code § 19.86.080(2)
consumers		
c. Civil penalty amount for	Weak	Wash. Rev. Code § 19.86.140 - up to \$2000 per
initial violations		violation

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Strong	Indoor Billboard/Washington, Inc. v. Integra Telecom of Washington, Inc., 170 P.3d 10 (Wash. 2007) (rejecting argument that reliance is required; proximate causation must be shown).
b. Does not require a showing of public interest or public impact	Weak	Hangman Ridge Training Stables, Inc. v. Safeco Title. Ins. Co., 719 P.2d 531 (Wash. 1986).
c. Does not require pre-	Strong	

suit notice to the defendant		
2. Available remedies		
a. Compensatory damages	Strong	Wash. Rev. Code § 19.86.090
b. Multiple or punitive damages	Strong	Wash. Rev. Code § 19.86.090 (but capped at \$10,000)
c. Attorney fees for consumers	Strong	Wash. Rev. Code § 19.86.090
2 Class actions		
3. Class actions a. Available under UDAP statute and other law	Strong	Nothing in the UDAP statute precludes class actions, and Washington courts have allowed class actions in several cases. <i>See, e.g.,</i> <i>Schnall v. AT & T Wireless Services, Inc.,</i> 161 P.3d 395, 401 (Wash. App. 2007), <i>review</i> <i>granted,</i> 185 P.3d 1194 (Wash. 2008); <i>Trimble</i> <i>v. Holmes Harbor Sewer Dist.,</i> 2003 WL 23100273 (Wash. Super. 2003);
A . St. A . A.		
4. Statute coverage a. Creditors and credit	Mixed	Wash. Rev. Code § 19.86.010(2) and (3), define "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 could be construed to exclude credit. However, Wash. Rev. Code § 19.86.170 states that the UDAP statute does not "apply to actions or transactions permitted by any other regulatory body or officer acting under statutory authority of this state or the United States." In <i>Vogt v.</i> <i>Seattle-First Nat. Bank</i> , 817 P.2d 1364 (Wash. 1991), the Supreme Court of Washington held that, notwithstanding this language, a UDAP claim could be maintained against a national bank for charging excess fees to administer a trust. The court held that Wash. Rev. Code § 19.86.170 "does not exempt actions or transactions merely because they are regulated generally. The exemption applies only if the particular practice found to be unfair or deceptive is specifically permitted, prohibited or regulated." In addition, the exemption 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 <i>shall</i> 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 states that "nothing that is required or permitted to be done" pursuant 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>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.</i> <i>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>review granted</i> , 180 P.3d 1291 (Wash. 2008); <i>Bailey v. State Farm Mut. Auto.</i> <i>Ins. Co.</i> , 91 Wash. App. 1045, 1998 WL 386273 (1998) (expressly holding that insurers can be subject to UDAP claims).
c. Utilities	Weak	The Supreme Court of Washington made clear in <i>Tanner Elec. Co-op. v. Puget Sound Power</i> & <i>Light Co.</i> , 911 P.2d 1301 (Wash. 1996) that utilities are exempt from UDAP coverage. <i>See</i>

d. Post sele este (debt	Strong	also Haberman v. Washington Public Power Supply System, 744 P.2d 1032 (Wash. 1987) (holding that rural electrical cooperatives are exempt from UDAP coverage). While Indoor Billboard/Washington, Inc. v. Integra Telecom of Washington, Inc., 170 P.3d 10 (Wash. 2007) relies on an exception to the general exemption to hold that certain telecommunications companies are not exempt, there is still a blanket exemption for most utility providers.
d. Post-sale acts (debt collection, repossession)	Strong	Wash. Rev. Code § 19.86.010(2) and (3), which define "trade," "commerce," and "asset" broadly, would 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 could be construed to exclude post-sale acts. A number of decisions have applied the statute to post-sale matters. <i>See, e.g., Stephens v.</i> <i>Omni Ins. Co.</i> , 159 P.3d 10 (Wash. App. 2007), <i>review granted</i> , 180 P.3d 1291 (Wash. 2008); <i>Evergreen Collectors v. Holt</i> , 803 P.2d 10, 14 (Wash. App. 1991) (holding that "a violation of the provisions of the Collection Agency Act is a per se violation of the Consumer Protection Act"); <i>Sherwood v.</i> <i>Bellevue Dodge, Inc.</i> , 669 P.2d 1258 (Wash. App. 1983) (finding that unlawful, unconsented to repossession is a per se violation of the state UDAP statute).
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.

WEST VIRGINIA

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Strong	W. Va. Code §§ 46A-6-102(7) (prefatory
or unconscionable acts		language), 46A-6-104
b. Broadly prohibits	Strong	W. Va. Code §§ 46A-6-102(7) (prefatory
deceptive acts		language), 46A-6-104
c. Provides the state agency	Strong	W. Va. Code §§ 46A-6-103, 46A-7-102(e). The
substantive rulemaking		state has adopted several rules.
authority		
	1	
2. Lack of preconditions		
to public enforcement		
a. Allows public	Strong	
enforcement without		
requiring a showing of the		
defendant's intent or		
knowledge		
3. Available remedies		
5. Available rememes		
a. Equitable relief	Strong	W. Va. Code § 46A-7-108
b. Restitution for	Strong	W. Va. Code § 46A-7-108 allows the attorney
consumers		general to obtain "other appropriate relief." In
		State ex rel. McGraw v. Imperial Marketing, 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.
c. Civil penalty amount for	Mixed	W. Va. Code § 46A-7-111(2) – up to \$5000 per
initial violations		violation if repeated and willful.

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Undecided	While West Virginia courts have not directly addressed the question, it is unlikely that they will hold that reliance is required. The statute

		prohibits "any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely [thereon], whether or not any person has in fact been misled, deceived or damaged thereby" W. Va. Code § 46A-6-102(7)(M). In In re West Virginia Rezulin Litigation, 585 S.E.2d 52, 75 (W.Va. 2003), the West Virginia Supreme Court read the statutory requirement of an "ascertainable loss" liberally in light of this language and held that a consumer meets that requirement simply by purchasing something "that is different from or inferior to that for which he bargained."
b. Does not require a showing of public interest	Strong	that for which he barganed.
or public impact c. Does not require pre- suit notice to the defendant	Weak	W. Va. Code § 46A-6-106(b).
2. Available remedies		
a. Compensatory damages	Strong	W. Va. Code § 46A-6-106(a)
b. Multiple or punitive damages	Weak	
c. Attorney fees for consumers	Strong	W. Va. Code § 46A-5-104
3. Class actions	<u> </u>	
a. Available under UDAP statute and other law	Strong	
4. Statute coverage		
a. Creditors and credit	Undecided	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." While courts in some other states have construed credit to be a "service," West Virginia courts have 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
		extension of consumer credit. This definition would be meaningless if the statute did not cover at least some 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. Further, W. Va. Code § 46A-1- 105(b) provides that "[m]ortgage lender and broker licensees are excluded from the provisions of this chapter to the extent those provisions directly conflict with any section of article seventeen, chapter thirty-one of this code," which again implies that they are covered except in the circumstances listed. The issue is complicated somewhat by <i>Herrod</i> <i>v. First Republic Mortg. 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. Since 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.
b. Insurance	Strong	The statute defines trade or commerce as involving "goods or services." It does not exclude insurance from this definition. Since UDAP statutes are to interpreted liberally, it is likely that West Virginia courts will hold that insurance is covered.
c. Utilities	Mixed	W. Va. Code § 46A-1-105(b) 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." This exclusion does not appear to exempt all activities of public utilities, and would probably allow application of the UDAP statute to non-tariff matters such as billing practices. Nonetheless, it excludes a significant portion of public

		utilities' activities.
d. Post-sale acts (debt	Strong	W. Va. Code, §§ 46A-2-124 – 129. See
collection, repossession)		Thomas v. Firestone Tire and Rubber Co., 164
		W.Va. 763, 266 S.E.2d 905 (W.Va. 1980)
		(interpreting W.Va. Code s 46A-2-122 to
		include all debt collectors). See also State ex
		rel. McGraw v. Telecheck Servs., Inc., 582
		S.E.2d 885, 897 n. 20 (W. Va. 2003).
e. Real estate	Undecided	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." Courts in certain other states have
		held that similar language encompasses real
		estate transactions, but West Virginia courts
		have not reached the question.

WISCONSIN

Wis. Stat. § 100.18

Wis. Stat. §§ 100.20 through 100.264

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair or unconscionable acts	Strong	Wis. Stat. Ann. § 100.20(1)
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. Lack of preconditions to public enforcement		
a. Allows public enforcement without requiring a showing of the defendant's intent or knowledge	Strong	
3. Available remedies		
a. Equitable relief	Strong	Wis. Stat. Ann. § 100.18(11)(a), (d) (for false advertisement law)
b. Restitution for consumers	Strong	Wis. Stat. Ann. §§ 100.18(11)(a), 100.20(6)
c. 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).

CONSUMER ACCESS TO JUSTICE	COMMENTS
1. Lack of preconditions for a suit	

a. Does not require reliance	Strong	Novell v. Migliaccio, 749 N.W.2d 544 (Wis. 2008) (consumer need not prove reliance, but jury may consider reasonableness of consumer's reliance on misrepresentation in determining causation); <i>Tool & Die Corp. v.</i> <i>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).
b. Does not require a showing of public interest or public impact	Strong	
c. Does not require pre- suit notice to the defendant	Strong	
2. Available remedies		
a. Compensatory damages	Strong	Wis. Stat. Ann. § 100.18(b)(2) for false advertisements. Consumers can bring suit for violations of Wis. Stat. Ann. § 100.20 (unfair practices) only if the defendant violated a rule. <i>See</i> Wis. Stat. Ann. § 100.20(5).
b. Multiple or punitive damages	Strong	Wis. Stat. Ann. § 100.20(5) allows double damages for violation of a rule.
c. Attorney fees for consumers	Strong	Wis. Stat. Ann. §§ 100.18(11)(b)(2), 100.20(5).
3. Class actions		
a. Available under UDAP statute and other law	Strong	Nothing in the statute precludes class actions, and Wisconsin courts have allowed class actions. <i>See, e.g.</i> Gallego v. Wal-Mart Stores, Inc., 707 N.W.2d 539 (Wis. App. 2005) (reversing dismissal of class claim under § 100.20), <i>review granted</i> , 712 N.W.2d 34 (Wis. 2006).
A State a service as		
4. Statute coverage a. Creditors and credit	Mixed	Wis. Stat. Ann. § 100.18 does not have any language that would exclude credit transactions. It 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 is broad enough to cover extensions of credit. Wis. Stat. Ann. § 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, so § 100.20 is unlikely to be of use to consumers in credit transactions.
b. Insurance	Weak	Wis. Stat. Ann. § 100.18(12)(a) exempts insurance from the false advertising prohibition. Wis. Stat. Ann. § 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 insurance practices, so § 100.20 is unlikely to be of use to consumers in insurance transactions.
c. Utilities	Strong	Wis. Stat. Ann. § 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. Ann. § 100.207 specifically restricts telecommunications marketing and collection practices, and Wis. Admin. Code Ch. ATCP 123 imposes restrictions on telecommunications and cable television services.
d. Post-sale acts (debt collection, repossession)	Weak	Wis. Stat. Ann. § 100.18 only covers advertisements. Wis. Stat. Ann. § 100.20 applies to "business and trade," which is clearly broad enough to include debt collection, 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 debt collection practices, so § 100.20 is of less use to consumers in debt collection.
e. Real estate	Strong	Wis. Stat. Ann. § 100.18 covers 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 in <i>Novell v.</i> <i>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.

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

PUBLIC ENFORCEMENT		COMMENTS
1. Scope of statute		
a. Broadly prohibits unfair	Strong	Wyo. Stat. Ann. § 40-12-105(a)(xv)
or unconscionable acts		
b. Broadly prohibits	Strong	Wyo. Stat. Ann. § 40-12-105(a)(xv)
deceptive acts		
c. Provides the state agency	Weak	
substantive rulemaking		
authority		
	1	
2. Lack of preconditions		
to public enforcement		
a. Allows public	Weak	The definition of unlawful practices at Wyo.
enforcement without		Stat. Ann. § 40-12-105 requires that the
requiring a showing of the		defendant act knowingly.
defendant's intent or		
knowledge		
	T	
3. Available remedies		
a. Equitable relief	Strong	Wyo. Stat. Ann. § 40-12-106
b. Restitution for	Strong	Wyo. Stat. Ann. § 40-12-106
consumers		
c. Civil penalty amount for	Strong	Wyo. Stat. Ann. § 40-12-113 - up to \$10,000 per
initial violations		violation if willful

CONSUMER ACCESS TO JUSTICE		COMMENTS
1. Lack of preconditions for a suit		
a. Does not require reliance	Weak	Wyo. Stat. Ann. § 40-12-108(a) explicitly requires reliance.
b. Does not require a showing of public interest or public impact	Strong	
c. Does not require pre- suit notice to the defendant	Weak	Wyo. Stat. Ann. §§ 40-12-102(a)(ix), 40-12- 108(a)
2. Available remedies		

a. Compensatory damages	Strong	Wyo. Stat. Ann. § 40-12-108(a)
b. Multiple or punitive	Weak	Wy0. Stat. Ann. § 40-12-100(a)
damages	W Cak	
c. Attorney fees for	Weak	Wyo. Stat. Ann. § 40-12-108(b) authorizes
consumers	weak	attorney fees in class actions, but there is no
consumers		similar authorization for individual actions.
		similar autionzation for marviduar actions.
3. Class actions		
a. Available under UDAP	Strong	Wyo. Stat. Ann. § 40-12-108(b)
statute and other law	Strong	(1) (0) Stati Timi 3 (0 12 100(0)
4. Statute coverage		
a. Creditors and credit	Strong	Wyo. Stat. Ann. § 40-12-102(a)(vi) defines
	Suong	"merchandise" to include "any property,
		tangible, intangible, real, personal, or mixed."
		This is broad enough to include extensions of
		credit. Nothing in the private cause of action
		0 1
		section, Wyo. Stat. Ann. § 40-12-108, would
		preclude application of the statute to credit.
		However, 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" rather than "transactions," and only
		provides an exemption where the practice is
		required or permitted. 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 credit transactions.
b. Insurance	Weak	The broad definition of "merchandise" should
b. Instruce	weak	cover insurance. However, in <i>Herrig v</i> .
		<i>Herrig</i> , 844 P.2d 487 (Wyo. 1992), the
		• • •
		Supreme Court of Wyoming stated: "Upon a
		review of the Wyoming Consumer Protection
		Act, we detect no evidence that the Wyoming
		Legislature intended to create a private cause
		of action for third-party claimants to sue a
		tort-feasor's liability insurer over settlement
		disputes 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
		Legislature has addressed the problem of and

		remedies for unfair claims settlement or payment practices in the Wyoming Insurance Code." (citations omitted). The court thus 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. While the case only involved third-party claimants, and the Court could take a broader view in a case involving the insured, the Court's broad language creates an impediment for consumers seeking a UDAP remedy for unfair or deceptive acts by insurers.
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" rather than "transactions," and only to practices that are "required or permitted." 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 post-sale acts should be covered.
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 transctions.