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## Expanding Local Enforcement of State and Federal Consumer Protection Laws

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# EXPANDING LOCAL ENFORCEMENT OF STATE AND FEDERAL CONSUMER PROTECTION LAWS

*Kathleen S. Morris\**

## ABSTRACT

This Article calls on Congress and the state legislatures to grant large cities and counties standing to enforce the Federal Trade Commission Act (the FTC Act) and its state statutory counterparts (or little Acts). The FTC Act, a federal law, prohibits businesses from engaging in any “unlawful,” “unfair,” or “deceptive” acts or practices, and the little Acts apply similarly broad prohibitions in all fifty states. This fifty-one-statute consumer protection regime—which has been the law of the land for several decades—carries enormous promise to halt a wide range of unlawful and harmful corporate practices in their earliest stages. Unfortunately, that promise has not been fulfilled because these laws are chronically under-enforced. At present, only one federal agency—the Federal Trade Commission—has broad standing to enforce the FTC Act; while state Attorneys General and consumers typically have standing to enforce the little Acts, they cannot keep up with the rate of corporate malfeasance. This Article argues that the nation’s legislatures should invite cities and counties with populations over 50,000 into consumer protection enforcement by granting them standing to seek injunctive relief and penalties under the FTC Act and little Acts. It addresses the practical benefits and barriers to disaggregating consumer protection enforcement in this way and discusses the attendant localism and federalism concerns.

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## INTRODUCTION

The nation’s consumer protection regime is broken.<sup>1</sup> The problem is not a lack of good law: federal and state legislatures have enacted

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1. By “consumer protection” I mean any unlawful, unfair, or fraudulent practice by a corporation that harms consumers, investors, or competitors. This Article assumes that consumer protection laws should be enforced in a manner that maximizes the “public interest,” by which I mean not only the physical but also the economic health and safety of consumers and the economy. See Amy Widman, *Advancing Federalism Concerns in Administrative Law Through a Revitalization of State Enforcement Powers: A Case Study of the Consumer Product Safety and Improvement Act of 2008*, 29 YALE L. & POL’Y REV. 165, 189 (2010) (“Defining ‘public interest’ is difficult. . . . In the context of consumer protection, the public

far-reaching consumer protection statutes, most notably the expansive Federal Trade Commission Act (the FTC Act or the Act)<sup>2</sup> and its state statutory counterparts (the little Acts).<sup>3</sup> The problem is that due to insufficient funding and staffing,<sup>4</sup> industry capture,<sup>5</sup> or some combination of both,<sup>6</sup> these potentially powerful bodies of consumer protection law are woefully under-enforced.<sup>7</sup>

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interest largely consists of the health and safety of consumers, and anti-public-interest behavior is the absence of regulation or enforcement.”) (citing the “activist theory of regulation” described in Barry Boyer & Errol Meidinger, *Privatizing Regulatory Enforcement: A Preliminary Assessment Of Citizen Suits Under Federal Environmental Laws*, 34 BUFF. L. REV. 833, 884–89 (1985)).

2. See Federal Trade Commission Act, 15 U.S.C. § 45(a)(1) (2012) (prohibiting all “unfair methods of competition” and “unfair or deceptive acts or practices”). The Act makes “unfair” or “deceptive” acts or practices unlawful (illegal acts or practices are per se “unfair”). As the Act’s language suggests, it is capable of operating either substantively or procedurally. When used as a procedural vehicle for enforcing other laws, it is conceptually akin to 42 U.S.C. § 1983 (2012), though aimed at corporate rather than government malfeasance.

3. See Appendix for a list of every state’s so-called “little FTC Act.” California’s Act has arguably the broadest language, which prohibits “any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any [specified] act prohibited by Chapter 1.” CAL. BUS. & PROF. CODE § 17200 Some state statutes create a more specific laundry list of unfair practices. See Appendix.

4. See Rachel E. Barkow, *Insulating Agencies: Avoiding Capture Through Institutional Design*, 89 TEX. L. REV. 15, 65 (2010) (describing the federal Consumer Products Safety Commission (CPSC), which Congress created more than forty years ago, as “chronically underfunded and understaffed”); see also Philip G. Schrag, *On Her Majesty’s Secret Service: Protecting The Consumer In New York City*, 80 YALE L.J. 1529, 1530 (1971) (“Inadequate funding, understaffing, weak legislation, lack of public support, over-bureaucratization and the absence of any real sense of mission conspired to render government agencies ineffective or, in some cases, servants of industry, while consumer fraud flourished.”).

5. See Barkow, *supra* note 4, at 16 (describing consumer protection in particular as “a breeding ground for capture”).

6. See *id.* at 16, 17–18, 65 (blaming both industry capture and lack of funding and staffing for failures of the federal banking and consumer agencies).

7. See *id.* at 15, 65–72 (detailing forty years of failed efforts by the Consumer Products Safety Commission); see also LAUREN K. SAUNDERS, NAT’L CONSUMER LAW CTR., PREEMPTION AND REGULATORY REFORM: RESTORE THE STATES’ TRADITIONAL ROLE AS “FIRST RESPONDER” 15 (2009), available at <http://www.nclc.org/images/pdf/preemption/restore-the-role-of-states-2009.pdf> (arguing that over time the credit marketplace—in such areas as mortgages, overdraft fees, and overall lending—has developed a “culture of deception” fueled in part by under-enforcement of state law due to federal preemption); Widman, *supra* note 1, at 179–91 (documenting how lax federal enforcement has compromised consumer protection and weakened the Consumer Product Safety Commission).

At present, the FTC Act is enforced almost exclusively by the FTC itself.<sup>8</sup> The Act does not provide for a private right of action or public rights of action by state or local governments (unlike, for example, the Clean Air Act).<sup>9</sup> Furthermore, among the fifty little Acts, only seven permit city and county enforcement,<sup>10</sup> and only eleven permit district attorney enforcement.<sup>11</sup> This paper calls for Congress and the state legislatures to extend consumer protection enforcement standing to cities and counties with populations over 50,000.<sup>12</sup>

For several decades, scholars and policy experts have pointed out the enormous gaps in consumer protection enforcement, and called for a more effective approach. Nearly half a century ago, Ralph Nader's book *Unsafe at Any Speed* spurred broad efforts to protect consumers.<sup>13</sup> Ten years after Mr. Nader published his book, Ann

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8. The only exception to FTC enforcement is that the Office of the Comptroller of the Currency enforces the Act against the banking industry. *See generally* Fredric J. Bendremer, *Applicability of Section 5 of the Federal Trade Commission Act to National Banks*, 22 ANN. REV. BANKING & FIN. L. 189 (2003).

9. *See* *Baum v. Great W. Cities, Inc., of N.M.*, 703 F.2d 1197, 1209 (10th Cir. 1983) (noting the absence of a private right of action under the FTC Act); *Dreisbach v. Murphy*, 658 F.2d 720, 730 (9th Cir. 1981) (same); *Alfred Dunhill, Ltd. v. Interstate Cigar Co.* 499 F. 2d 232, 237 (2d Cir. 1974) (same). In sharp contrast, the federal civil rights statute provides for a private right of action. *See* 42 U.S.C. § 1983. The Natural Gas Pipeline Safety Act and Clean Air Act provide for not only a private but a public—including municipal—right of action. *See* Clean Air Act, 42 U.S.C. §§ 7602(e), 7604(a)(1) (2006); Natural Gas Pipeline Safety Act, 49 U.S.C. §§ 60121, 60101(a)(17) (2006).

10. Those states are California, Mississippi, Missouri, New Jersey, South Carolina, Texas, and Virginia. *See* Appendix.

11. Those states are Alabama, California, Colorado, Michigan, Mississippi, Nebraska, Nevada, Oklahoma, Oregon, Pennsylvania, and Texas. District attorneys are often hybrid state-local creatures, in that they are technically state actors but elected by a local constituency. As Ann Marie Tracey argued long ago, prosecutors would also make logical partners in consumer protection enforcement. *See* Ann Marie Tracey, *Consumer Protection: An Expanded Role for the Local Prosecutor*, 44 U. CIN. L. REV. 81, 81–82 (1975). But some have suggested that prosecutors may be uncomfortable criminalizing consumer protection violations. *See* William F. Mulrone, *Deceptive Practices In The Marketplace: Consumer Protection by New York Government Agencies*, 3 FORDHAM URB. L.J. 491, 496 (1974).

12. I suggest drawing the line at 50,000 to allow for participation by at least one city or county in each of the fifty states. The smallest such jurisdiction is the city of San Marcos, Texas (population 50,001). *Largest Cities by Population—Full List*, BIGGESTUSCITIES.COM, <http://www.biggestuscities.com/?full=1> (last visited Oct. 16, 2013). This measure would permit consumer protection enforcement by roughly 700 cities and 1000 counties. *See Largest Cities by Population*, *supra*; *Population of US Counties*, DEMOCRAT & CHRON., <http://rocdocs.democratandchronicle.com/database/population-us-counties> (last visited Oct. 16, 2013).

13. RALPH NADER, UNSAFE AT ANY SPEED (1965).

Marie Tracey pointed out that “[c]onsumer laws are not self-executing,” and called for local criminal prosecution of consumer rights violations.<sup>14</sup> In the nearly four decades since then, politicians<sup>15</sup> and scholars<sup>16</sup> have joined consumer rights advocates to rally for better and stronger consumer protection.

Unfortunately, public and private efforts to rein in corporate abuses have fallen short. As Rachel Barkow wrote, “[Pu]blic interest advocacy groups . . . are no match for the resources and political clout of the industries that oppose consumer protection laws.”<sup>17</sup> If anything, unlawful, unfair, and fraudulent corporate practices are becoming increasingly more widespread, complex, and damaging to the economy.<sup>18</sup> Cities and counties pay an enormous price for corporate lawbreaking,<sup>19</sup> yet can do very little about it. They cannot enforce existing laws, and powers and preemption doctrines, along with public policy concerns, constrain local legislation. Accordingly, the only real—and arguably ideal—role for cities and counties is as active enforcers of state and federal law.

This Article is not the first to consider the potential benefits and pitfalls of disaggregated civil law enforcement. In recent years legal scholars including Amy Widman, Rachel Barkow, Gillian Metzger, and Margaret Lemos have written either about state enforcement of federal law in general,<sup>20</sup> or more particularly, state enforcement of federal consumer protection statutes.<sup>21</sup> And as early as 2006,

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14. See Tracey, *supra* note 11, at 81–82.

15. In 1985, the late Senator Howard Metzenbaum of Ohio introduced a bill providing for state attorney general enforcement of the FTC Act. See Thomas W. Queen, *Recent Developments in Federal Antitrust Legislation*, 54 ANTITRUST L.J. 383, 394 (1985). That bill was never enacted into law.

16. See, e.g., Tracey, *supra* note 11, at 81–82.

17. See Barkow, *supra* note 4, at 65.

18. Corporate malfeasance in the financial services industry is perhaps the most egregious recent example of unchecked corporate power. See generally CHARLES GASPARINO, *THE SELLOUT: HOW THREE DECADES OF WALL STREET GREED AND GOVERNMENT MISMANAGEMENT DESTROYED THE GLOBAL FINANCIAL SYSTEM* (2009).

19. See generally THIERRY PAULAIS, *LOCAL GOVERNMENTS AND THE FINANCIAL CRISIS: AN ANALYSIS* (2009), available at [http://www.citiesalliance.org/sites/citiesalliance.org/files/Paulais\\_LocalGovernmentsandtheFinancialCrisis\\_Eng.pdf](http://www.citiesalliance.org/sites/citiesalliance.org/files/Paulais_LocalGovernmentsandtheFinancialCrisis_Eng.pdf) (documenting the devastating impact of the financial crisis on local governments).

20. See generally Margaret H. Lemos, *State Enforcement of Federal Law*, 86 N.Y.U. L. REV. 698 (2011); Gillian E. Metzger, *Federalism and Federal Agency Reform*, 111 COLUM. L. REV. 1 (2011).

21. See Barkow, *supra* note 4, at 65. See generally Widman, *supra* note 1.

Kathleen Engel called on state legislatures to disaggregate the enforcement of state lending laws.<sup>22</sup>

This Article fills a gap in the existing literature by considering whether cities and counties should have standing to enforce the Act and little Acts; and by discussing the theoretical implications for localism and federalism of disaggregating consumer protection enforcement to cities and counties. This Article begins to fill those gaps in the literature. On the policy front, it suggests that Congress and state legislatures should grant cities and counties of over 50,000 people standing to enforce the FTC Act and the little Acts.<sup>23</sup> On the theoretical front, it addresses localism (and briefly, federalism) concerns, disaggregated enforcement raises, and explains why pushing more power to the local level in the consumer area may serve rather than undercut a *healthy* localism.<sup>24</sup> It argues that a *healthy modern localism's* ultimate goal is to maximize local *power*, not necessarily local *autonomy*, and that in the consumer protection context the most sensible way to increase local power is by allowing local enforcement of state and federal laws rather than enacting and defending local laws against preemption.

As Nestor Davidson wrote, “[a]t the heart of cooperative localism is the potential—which will not be realized in all instances—of an alchemical reaction that can be sparked when national goals are filtered through the instrumentality of local communities.”<sup>25</sup> This Article challenges policymakers and scholars to consider that potential in the context of consumer protection enforcement. It proceeds in three parts. Part I summarizes the Act and little Acts and

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22. See Kathleen C. Engel, *Do Cities Have Standing? Redressing The Externalities of Predatory Lending*, 38 CONN. L. REV. 355, 359–60 (2006).

23. This Article focuses exclusively on local public enforcement of the FTC Act and parallel state statutes. It does not address local enforcement of other state and federal laws or private enforcement of the FTC Act.

24. This Article’s localism discussion mirrors an active debate among federalism scholars—led by Heather Gerken—about whether and how democracy and federalist theories can and should account for localities. See generally Heather K. Gerken, *Exit, Voice, and Disloyalty*, 62 DUKE L.J. 1349 (2013); Heather K. Gerken, *The Federalis(m) Society*, 36 HARV. J.L. & PUB. POL’Y 941 (2013); Heather K. Gerken, *Foreword: Federalism All the Way Down*, 124 HARV. L. REV. 4 (2010).

25. Nestor M. Davidson, *Cooperative Localism: Federal-Local Collaboration in an Era of State Sovereignty*, 93 VA. L. REV. 959, 1033 (2007); Roderick M. Hills Jr., *Against Preemption: How Federalism Can Improve the National Legislative Process*, 82 N.Y.U. L. REV. 1, 4 (2007) (“[T]he benefits of federalism in the present and in the future will rest on how the federal and state governments will interact, not in how they act in isolation from each other.”).

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current barriers to public and private enforcement. Part II proposes local government enforcement of the Act and little Acts, and considers the practical barriers to and benefits of this proposal. Part III addresses the theoretical concerns this proposal raises.

## I. THE CURRENT CONSUMER PROTECTION ENFORCEMENT REGIME AND ITS LIMITATIONS

### A. The FTC Act

Congress established the Federal Trade Commission (FTC or Commission) in 1914 as an independent agency to enforce the Act. The Act has existed more or less in its present form since 1938.<sup>26</sup> The Act's operative language, commonly referred to as "section 5," broadly prohibits "unfair methods of competition" and "unfair or deceptive acts or practices."<sup>27</sup> The Commission has described the factors it considers in determining whether a practice that is neither unlawful nor deceptive is nonetheless unfair:

(1) whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise—whether, in other words, it is within at least the penumbra of some common-law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers (or competitors or other businessmen).<sup>28</sup>

This language is strikingly flexible and far-reaching, and Congress and the federal courts grant the FTC broad sway in fashioning rules to effectuate and enforce section 5.<sup>29</sup> Moreover, the Act is a civil rather than criminal statute, so liability is established under the relatively low preponderance standard. The Act does not limit the types of corporations plaintiffs may sue or the types of practices plaintiffs may challenge.

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26. *See* *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 384–85 (1965) (explaining the history of the Act).

27. 15 U.S.C. § 45(a)(1) (2012).

28. Statement of Basis and Purpose of Trade Regulation Rule 408, Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to the Health Hazards of Smoking, 29 Fed. Reg. 8324, 8355 (July 2, 1964) (to be codified at 16 C.F.R. pt. 408).

29. *See, e.g.*, *FTC v. Sperry & Hutchinson Co.*, 405 U.S. 233, 239 (1972) (holding that the FTC may prohibit conduct under § 5 even if it violates neither the letter nor the spirit of any more specific federal laws).



But the Act has a glaring enforcement limitation: only the FTC has broad authority to enforce the Act.<sup>30</sup> Unlike other federal statutes, the Act does not allow private rights of action, public rights of action by state attorneys general, or public rights of action by local public entities.<sup>31</sup> The FTC has just seven regional divisions—in Cleveland, Chicago, New York, Seattle, Atlanta, Dallas, and Los Angeles-San Francisco—to cover the entire nation.<sup>32</sup> The FTC's modest regional presence surely contributes to its limited effectiveness.<sup>33</sup>

### B. The Little Acts

Each of the fifty states has passed some version of the F.T.C Act.<sup>34</sup> These laws have some substantive variation, presumably because each statute is tailored to the politics and policy preferences of its particular state.<sup>35</sup> As for their enforcement provisions, an

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30. See 15 U.S.C. § 1692(a) (2012). See generally FTC, FEDERAL TRADE COMMISSION ANNUAL REPORT 2008: FAIR DEBT COLLECTION PRACTICES ACT (2008), available at [www.ftc.gov/os/2008/03/P084802fdcpareport.pdf](http://www.ftc.gov/os/2008/03/P084802fdcpareport.pdf) (noting that while § 1692(b) grants very narrow standing to other federal agencies, they rarely have cause to enforce the Act).

31. See *Baum v. Great W. Cities, Inc., of N.M.* 703 F. 2d 1197, 1209 (10th Cir. 1983) (noting the absence of a private right of action under the FTC Act); *Dreisbach v. Murphy*, 658 F. 2d 720, 730 (9th Cir. 1981) (same); *Alfred Dunhill Ltd. v. Interstate Cigar Co.*, 499 F. 2d 232, 237 (2d Cir. 1974) (same). By contrast, to take just two examples, the federal civil rights statute provides for a private right of action against public actors who commit civil rights violations. See 42 U.S.C. § 1983 (2006). Similarly, the Clean Water Act and the Natural Gas Pipeline Safety Act provides for private and public rights of action to enforce that statute and regulations promulgated thereunder:

A person may bring a civil action in an appropriate district court of the United States for an injunction against another person (including the United States Government and other governmental authorities to the extent permitted under the 11th amendment to the Constitution) for a violation of this chapter or a regulation prescribed or order issued under this chapter.

49 U.S.C. § 60121 (2006). “Person” is defined broadly to include states and municipalities. See 49 U.S.C. § 60101(a)(17).

32. See FTC, FEDERAL TRADE COMMISSION: BUREAU OF CONSUMER PROTECTION (2013), available at [www.ftc.gov/bcp/bcp-org-chart.pdf](http://www.ftc.gov/bcp/bcp-org-chart.pdf).

33. See James J. Pulliam, *Good Cop, Bad Cop: Market Competitors, UDAP Consumer Protection Laws, and the U.S. Mortgage Crisis*, 43 LOY. L.A. L. REV. 1251, 1255–56 (2010) (arguing that under-enforcement of the little Acts has contributed to harmful, unlawful business practices, and calling for business competitor standing to sue).

34. See Appendix.

35. States also have common law tort theories that can be applied in the consumer protection area, such as fraud, nuisance, and unjust enrichment. See Engel, *supra* note 22, at 367. This Article focuses on statutes because, to the extent a consumer

overwhelming number of little Acts rely on a combination of state government enforcement<sup>36</sup> and private rights of action<sup>37</sup> to effectuate their provisions.<sup>38</sup> Only fifteen of the fifty states allow any kind of local enforcement of consumer protection laws: seven states allow at least some city and county (*civil*) consumer protection enforcement (California, Mississippi, Missouri, New Jersey, South Carolina, Texas, and Virginia);<sup>39</sup> eleven states allow district attorneys—often a hybrid of state and local<sup>40</sup>—to pursue (*criminal*) enforcement (Alabama, California, Colorado, Michigan, Mississippi, Nebraska, Nevada, Oklahoma, Oregon, Pennsylvania, and Texas).<sup>41</sup> Some of these states limit the local public entities that can bring suit, and/or incorporate procedural safeguards such as requiring prior state certification of localities as enforcement agents,<sup>42</sup> prior approval by the state before filing suit,<sup>43</sup> or prior notification to the state before filing suit,<sup>44</sup> but at least make use of some local law enforcement resources. By contrast,

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protection statute prohibits “unlawful” acts, it provides a vehicle for enforcing all statutory and common law.

36. Most state statutes contemplate enforcement by the Attorney General and State’s attorneys; some also have state officers specifically charged with enforcement. *See* Appendix.

37. Forty-two states’ consumer protection laws contemplate private enforcement by persons harmed. They are: Alaska, Arkansas, California, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. *See* Appendix. Five states do not provide for private enforcement. They are: Alabama, Arizona, Colorado, Florida, Hawaii, and Maine. *See id.*

38. Only one state—Minnesota—relies entirely on private enforcement. *See id.*

39. *See id.* As Ann Marie Tracey argued long ago, prosecutors are also logical partners in consumer protection enforcement. *See* Tracey, *supra* note 11, at 81–82. But prosecutors tend to be experts in criminal rather than civil law enforcement, and some have suggested prosecutors may be uncomfortable criminalizing economic wrongdoing. *See* Mulrone, *supra* note 11, at 496.

40. In many states, district attorneys are technically state actors, but they are elected and paid by local governments.

41. *See* Appendix. Unfortunately, it seems that prosecutors are not only stretched thin, but are also often uncomfortable with charging consumer protection violations criminally, so it may not make sense to grant them exclusive enforcement. *See* Mulrone, *supra* note 11, at 496.

42. *See, e.g.*, N.J. STAT. ANN. § 56.8-14.1 (West 2012).

43. *See, e.g.*, S.C. CODE ANN. § 39-5-130 (1976).

44. *See, e.g.*, TEX. BUS. & COM. CODE ANN. § 17.501 (West 2011).

thirty-five states do not provide for *any* local consumer protection enforcement, whether criminal or civil.<sup>45</sup>

### C. Barriers to Local Legislation

The next logical question is: why not solve this problem by enacting and enforcing local consumer protection laws? That would be the most localist approach to expanding consumer protection, and some localities have passed such laws.

The problem is that local legislative efforts are subject to challenge under preemption<sup>46</sup> and powers<sup>47</sup> doctrines.<sup>48</sup> As Paul Diller observed, “when a city adopts a new policy that differs from state law and may harm some segment of the business community, a preemption challenge is almost certain to follow.”<sup>49</sup> When it comes to consumer (and environmental) protection, it has been difficult even for states to enact laws that hold up against federal preemption challenges. For this very reason, legal scholars including Amy Widman,<sup>50</sup> Rachel Barkow,<sup>51</sup> Gillian Metzger,<sup>52</sup> and Margaret Lemos<sup>53</sup> have suggested that Congress grant state government actors standing to enforce federal law. Even absent a preemption threat, it may be

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45. See Appendix.

46. See, e.g., *Am. Fin. Servs. Ass’n v. City of Oakland*, 104 P.3d 813, 820 (Cal. 2005) (sustaining a preemption challenge to a local consumer protection ordinance).

47. See, e.g., *Hunters Anglers and Trappers Ass’n of Vt. v. Winooski Valley Park Dist.*, 913 A.2d 391, 395 (Vt. 2006) (considering and rejecting a powers challenge to local law).

48. See generally Engel, *supra* note 22.

49. See Paul Diller, *Intrastate Preemption*, 87 B.U. L. REV. 1113, 1115 (2007) (urging a more relaxed approach to state preemption to allow for greater local experimentation); Nicholas P. Miller & Alan Beals, *Regulating Cable Television*, 57 WASH. L. REV. 85 (1981) (preemption of local laws regulating cable television); Warren, Gorham, & Lamont, Inc., *Truth-In-Lending Act Does Not Preempt City Consumer Protection Law*, 89 BANKING L.J. 345 (1972) (preemption of local laws regulating banks); see also *Cal. Fed. Sav. & Loan Ass’n v. City of Los Angeles*, 812 P.2d 916, 925–30 (Cal. 1991), which provides a concrete example. In this case, the City of Los Angeles, a home rule city, imposed a local license tax on a savings and loan association. The California Supreme Court struck down the ordinance on state law preemption grounds, finding bank taxes to be a matter of statewide rather than local concern. *Id.* at 915, 931.

50. Widman, *supra* note 1, at 166–67 (urging Congress to promote regulatory enforcement of federal product safety laws by granting states standing to enforce federal law).

51. See generally Barkow, *supra* note 4.

52. See generally Metzger, *supra* note 20.

53. See generally Lemos, *supra* note 20.

impractical for localities to enact consumer protection legislation at a time when business is moving decidedly in not just a national but global direction. Compared to Congress and the state legislatures, localities are not terribly well positioned to *enact* consumer protection legislation. But compared to federal and state agencies, localities are uniquely well positioned to *enforce* consumer protection legislation.

#### D. Barriers to Private Enforcement Actions

This Article makes the case that we need more public enforcement of consumer protection laws—but why? Most little Acts permit private enforcement;<sup>54</sup> why isn't private enforcement enough? Legal scholars and jurists have ably explained the multiple barriers to private enforcement of consumer protection laws. They include:

- (1) *Private Arbitration Agreements*. Corporations have increasingly turned to arbitration agreements to prevent consumers from bringing disputes into court, and courts have energetically backed those agreements.<sup>55</sup> The efficacy of arbitration (as opposed to litigation) is subject to spirited scholarly debate.<sup>56</sup> For purposes of this Article, we need only observe that, because public entities like cities and counties are not signatories to consumer arbitration agreements, they can bring enforcement actions into court.
- (2) *Class Action Requirements*. Courts have increasingly tightened class action requirements—most recently the requirement of commonality—limiting private litigants' ability to vindicate consumer interests.<sup>57</sup> A government actor who brings an enforcement action files on behalf of the public at large rather than a specified class, and thus need not satisfy *any* of the usual class action requirements.
- (3) *"Actual Injury" Standing Requirements*. Courts often apply stringent "actual injury" requirements in citizen suits, which can restrict private plaintiffs' ability to stop corporate

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54. See Appendix.

55. See generally Thomas J. Stipanowich, *The Third Arbitration Trilogy: Stolt-Nielsen, Rent-A-Center, Concepcion and the Future of American Arbitration*, 22 AM. REV. INT'L ARB. 323 (2011).

56. See generally *id.*

57. See generally A. Benjamin Spencer, *Class Actions, Heightened Commonality, and Declining Access to Justice*, 93 B.U. L. REV. 441 (2013).

malfeasance.<sup>58</sup> A government actor seeking to enjoin an unfair business practice on behalf of the public at large is typically not subject to the same stringent “actual injury” requirements.<sup>59</sup>

- (4) *Aggressive Litigation Tactics*: When the plaintiff in a consumer lawsuit is an individual or group of individuals, corporate defendants have the option of engaging in a war of attrition via the discovery process.<sup>60</sup> A government actor who brings an enforcement action on behalf of the public at large is subject to much more limited discovery, because such cases focus on the defendant’s conduct or whether the defendant is violating the law,<sup>61</sup> and not on whether the plaintiff in the case is at fault.
- (5) *Bankruptcy Stays*: Corporations seeking bankruptcy can seek a stay of *private* consumer protection enforcement actions.<sup>62</sup> However, corporations cannot seek a stay in *public* enforcement cases.<sup>63</sup> Due to this distinction, public enforcement of consumer protection laws against bankrupt corporations (along with efforts to recover funds via the bankruptcy process) may continue even though a bankruptcy filing would have halted private enforcement immediately.

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58. See generally Cass R. Sunstein, *What’s Standing After Lujan? Of Citizen Suits, “Injuries,” and Article III*, 91 MICH. L. REV. 163 (1992). The “actual injury” requirement has been hotly debated in the consumer protection context. See generally *id.* As of 2004 (when California citizens enacted Proposition 64) a private plaintiff only has standing to invoke the statute if he or she personally “suffered injury in fact” in the form of a loss of money or property as a result of the challenged practice. Pulliam, *supra* note 33, at 1282. Ballot materials in support of Proposition 64, a statutory ballot measure that passed fifty-nine percent to forty-one percent, stated that some private plaintiffs’ attorneys were using section 17200 to generate attorney’s fees without creating a corresponding public benefit. See *id.* at 1294. The supporters sought to put an end to suits brought on behalf of plaintiffs who had not been personally economically harmed by the challenged business practice. See *id.* At least one commentator has called for state legislatures to eliminate the “actual injury” requirement for a business competitor of the defendant who seeks to pursue a representative claim for unfair business practices. See *id.* at 1285–86.

59. See, e.g., *Green v. Obledo*, 624 P.2d 256 (Cal. 1981).

60. See generally Frank H. Easterbrook, *Discovery as Abuse*, 69 B.U. L. REV. 635 (1989).

61. See *In re Tobacco II Cases*, 207 P.3d 20, 37–38 (Cal. 2009).

62. See 11 U.S.C. § 362(b)(4) (2012).

63. See *id.*

### E. Why Consider Local (Rather than Additional State or Federal) Consumer Protection Enforcement?

The best reasons to consider local enforcement rather than simply adding more state or federal enforcement of consumer protection laws are proximity, industry capture, and the need to increase local government sophistication.

With respect to proximity, “localities are the primary site for many areas of public policy at the center of modern life.”<sup>64</sup> They operate not only as governments, but also as public corporations.<sup>65</sup> They are simultaneously playing the game and watching from the sidelines. This dual vantage point makes them uniquely suited to the role of corporate watchdog. Indeed, one could fairly argue that—as among our three levels of government—localities are the most immediately steeped in the world of commerce, and thus uniquely positioned to assist with consumer protection enforcement.

With respect to industry capture, Margaret Lemos has argued forcefully that disaggregating enforcement of federal law to the states would help maintain robust enforcement in the face of federal agency “capture” by corporate interests.<sup>66</sup> The same could be said of disaggregating enforcement of federal and state law to local public entities.<sup>67</sup> That’s not to say cities and counties would not be vulnerable to capture; the question of local government capture would have to be studied closely.

Finally, with respect to the need to increase local government’s economic sophistication, consumer fraud schemes are becoming ever more complex.<sup>68</sup> To fend against the next wave of corporate

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64. Davidson, *supra* note 25, at 968.

65. See Kathleen S. Morris, *San Francisco and the Rising Culture of Engagement in Local Public Law Offices*, in *WHY THE LOCAL MATTERS: FEDERALISM, LOCALISM, AND PUBLIC INTEREST ADVOCACY* 51–53 (Kathleen Claussen et al. eds., 2010).

66. See Lemos, *supra* note 20, at 706 (explaining that non-federal government enforcement of federal law disrupts the monopoly on enforcement). Professor Lemos posits that there are two types of public enforcement. *Id.* at 699. This Article contends that there are three.

67. A recent example is San Francisco’s suit against California under the Federal Gas Pipeline Safety Act. See *generally* Complaint, City & Cnty. of San Francisco. v. U.S. Dep’t of Transp., No. C 12-0711, 2013 WL 2433811 (N.D. Cal. Feb. 18, 2013). San Francisco alleges that both federal and state agencies charged with ensuring gas pipeline safety have been captured by the energy industry, utterly undermining enforcement and placing lives at risk. See *generally id.*

68. The debacle involving securitization of mortgages is a classic example of how complicated and dangerous corporate malfeasance has become.

malfeasance, we need our local government employees to be sophisticated enough so they can catch and help defend against harmful corporate behavior.

## II. EXPANDING LOCAL ENFORCEMENT OF STATE AND FEDERAL CONSUMER PROTECTION LAWS

### A. Municipal Right of Action Under FTC Act

Congress could enact the most sweeping expansion of local consumer protection enforcement by granting large cities and counties standing to seek injunctive relief and penalties under the FTC Act. Taking this step would transform the Act into a procedural vehicle akin to 42 U.S.C. § 1983, though aimed (of course) at corporate rather than government malfeasance. If state legislatures were willing to grant localities standing under the little Acts then local public standing under the FTC Act would not be absolutely essential. But granting standing under the FTC Act would be the fastest, most efficient, and most comprehensive means of drawing cities and counties into consumer protection enforcement.<sup>69</sup>

### B. Municipal Right of Action Under the Little Acts

Alternatively (or additionally), state legislatures could amend the standing provisions in consumer protection statutes to grant cities and counties the ability to enforce them. This Article employs California's version of a little Act—California Business & Professions Code Section 17200—as an active example to allow us to envision how this move might play out. Section 17200 serves as a solid model for two reasons. First, because its language closely mirrors the FTC Act's language, tracking how section 17200 has operated in California over the past few decades gives us a reasonably reliable picture of

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69. The federal government could opt for a narrower alternative to granting local government standing to enforce the Act. It could opt to enter into contracts with selected localities to enforce the Act, as it has in the immigration context. See Cristina M. Rodriguez, *The Significance of the Local in Immigration Regulation*, 106 MICH. L. REV. 567, 591–92 (2008) (discussing § 287(g) of the Immigration and Nationality Act, which authorizes localities to enter into agreements with the federal government to enforce federal immigration laws). Contract-based enforcement has the potential to be both narrower and broader than statutory enforcement: narrower because cities and counties would gain enforcement powers—if at all—contract-by-contract, jurisdiction by jurisdiction; broader because the contract could in theory allow the locality to do more than just file suit. See *id.* Some § 287(g) agreements allow localities to engage in direct enforcement as if they were federal agents. See *id.*

how a “national section 17200” might operate.<sup>70</sup> Second, California courts rely heavily on federal court interpretations of the FTC Act to interpret section 17200,<sup>71</sup> which helps us picture a “national section 17200” from a jurisprudential perspective.

By all accounts, localities with standing to enforce section 17200 have found it to be flexible and powerful.<sup>72</sup> It is flexible because, like the FTC Act, section 17200 has both substantive and procedural components. Substantively, section 17200 permits courts to set new standards of fair and unfair business practices in response to the endless creativity of business models.<sup>73</sup> Procedurally, section 17200’s prohibition against any “unlawful” conduct means plaintiffs can “borrow” violations of other statutes that may or may not themselves provide for private rights of action.<sup>74</sup> Yet also importantly, section 17200 checks the possibility that appellate courts might issue

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70. California has a population of over thirty-eight million. *State & County QuickFacts*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/06000.html> (last updated June 27, 2013). California has the ninth largest economy in the world. MAC TAYLOR, CAL FACTS 2013, at 1 (2013), available at [http://www.lao.ca.gov/reports/2013/calfacts/calfacts\\_010213.pdf](http://www.lao.ca.gov/reports/2013/calfacts/calfacts_010213.pdf).

71. *Cel-Tech Commc’ns, Inc. v. L.A. Cellular Tel. Co.*, 973 P.2d 527, 543 (Cal. 1999) (“In view of the similarity of language and obvious identity of purpose of the [the Act and section 17200], decisions of the federal court on the subject are more than ordinarily persuasive.” (citations and internal quotation marks omitted)).

72. For a discussion of how one city has made the most of section 17200’s flexibility and power, see generally Morris, *supra* note 65.

73. As the California Supreme Court put it nearly eighty years ago:

The fact that a scheme is original in its conception is not a good argument against its circumvention. It has been said in . . . one of the leading cases on unfair competition in this state: The fact that the question comes to us in an entirely new guise, and that the schemer has concocted a kind of deception heretofore unheard of in legal jurisprudence, is no reason why equity is either unable or unwilling to deal with him. It has been said by some judge or law writer that no fixed rules can be established upon which to deal with fraud, for, were courts of equity to once declare rules prescribing the limitations of their power in dealing with it, the jurisdiction would be perpetually cramped and eluded by new schemes which the fertility of man’s invention would contrive.

*Am. Philatelic Soc’y v. Claibourne*, 46 P.2d 135, 140 (Cal. 1935) (internal quotation marks omitted). California courts continue to develop substantive law under section 17200 as circumstances require. See *Roskind v. Morgan Stanley Dean Whitter & Co.*, 95 Cal Rptr. 2d 258, 261 (Cal. Ct. App. 2000) (“The Legislature . . . intended by this sweeping language to permit tribunals to enjoin on-going wrongful business conduct in whatever context such activity might occur.” (citation and internal quotation marks omitted)).

74. For a recent explication of section 17200’s operation and reach, see *Hinojos v. Kohl’s Corp.*, 718 F. 3d 1098, 1103 (9th Cir. 2013); see also *Roskind*, 95 Cal. Rptr. 2d at 251.



overbroad or inconsistent rulings by requiring localities to inform the state Attorney General if an appellate court takes an appeal or writ involving judicial interpretation of that statute.<sup>75</sup>

Section 17200 is also powerful for several reasons. It allows localities to challenge indirectly business practices that are unlawful even if they lack the power to regulate those practices directly (that is, even if direct oversight is committed exclusively to state agencies), and even if the underlying substantive law cannot be directly enforced. Also, section 17200 reaches not only current but also past unlawful acts or practices if they are likely to recur.<sup>76</sup> Local enforcement of state and federal consumer protection laws can be conducted by in-house city and county counsel, or alternatively, by law firms hired to represent those entities.<sup>77</sup>

Finally, under California law, if a local public entity recovers civil penalties in a section 17200 action, that entity not only *can* but *must* use those funds for future enforcement of consumer protection laws.<sup>78</sup> In other words, California local consumer protection enforcement, when successful, is self-funding. But when that system is not successful (that is, when a case is brought that is legally or factually

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75. See CAL. BUS. & PROF. CODE §§ 17209, 17536.5 (West 2012). Because this requirement is not jurisdictional, the Attorney General may be notified after the appeal is taken as long as the appellate court grants the State an opportunity to be heard before it issues a legal interpretation of section 17200. See *Californians for Population Stabilization v. Hewlett-Packard Co.*, 67 Cal. Rptr. 2d 621, 627–28 (Cal. Ct. App. 1997), *abrogated by Cortez v. Purolator Air Filtration Prods.*, 999 P.2d 706 (Cal. 2000).

76. See *Stop Youth Addiction, Inc. v. Lucky Stores, Inc.*, 950 P.2d 1086, 1097 (Cal. 1998) (explaining the reach of section 17200), *superseded by statute as stated in Arias v. Superior Court*, 209 P.3d 923 (Cal. 2009). Each act that constitutes a violation of section 17200 can potentially carry a separate civil penalty. See BUS. & PROF. CODE § 17206.

77. For example, the law firm of Cotchett, Pitre & McCarthy filed eight federal lawsuits on behalf of various California municipalities, alleging that banks rigged the benchmark interest rate tied to trillions of dollars of loans and financial products worldwide, thereby increasing their profits at the expense of institutional investors, including their clients. See Vanessa Blum, *Cotchett Firm Stakes Claim in LIBOR Mess*, RECORDER (Cal.), Jan. 9, 2013. Potential damages have been estimated to be upwards of one trillion dollars. See *id.* In California, when law firms represent public entities, in-house municipal counsel must control the litigation to avoid potential conflict-of-interest issues. See *County of Santa Clara v. Superior Court*, 235 P.3d 21, 35 (Cal. 2010) (approving the use of contingency counsel in affirmative litigation by municipalities as long as the litigation was ultimately controlled by public lawyers, who have a higher duty of neutrality than private plaintiff's attorneys).

78. See BUS. & PROF. CODE § 17206.

tenuous), it is not self-funding. This simultaneously encourages good and discourages bad (that is, specious) public enforcement.

Overall, section 17200 has had a tremendously positive impact on the rights of California consumers. One scholar has described court decisions applying section 17200 as having “chang[ed] the maxim ‘caveat emptor’ into ‘caveat vendor.’”<sup>79</sup>

### C. Practical Barriers to Local Consumer Protection Enforcement

Local consumer protection enforcement would undoubtedly raise significant practical barriers. This Article groups these barriers into four categories—politics, money, culture and sophistication—and comments briefly on each of them.

#### 1. Politics

Granting localities standing to enforce state and federal consumer protection laws would be politically bold. Even if state and federal legislatures limited enforcement to localities with a population of more than 50,000, that move would add more than one thousand potential<sup>80</sup> corporate watchdog entities to the national and state scenes. It is logical to expect such a proposal to provoke significant corporate opposition, as have proposals for state enforcement of federal laws.<sup>81</sup> It is impossible to know whether, given the reality of corporate funding in politics,<sup>82</sup> consumer advocates in the public and private sectors could ever overcome certain political opposition.

It is worth noting, however, that while this move would be politically *bold*, it would not be truly *radical*. Local enforcement is not new; localities have a long history of seeking injunctions against corporations to abate economically harmful business practices, including in complex cases.<sup>83</sup> Local government statutory standing is

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79. See Wesley J. Howard, *Former Civil Code Section 3369: A Study in Judicial Interpretation*, 30 HASTINGS L.J. 705, 721 (1979).

80. I say “potential” because no locality would be obliged to engage in consumer protection enforcement, but it could if it were willing and able to do so.

81. See generally Widman, *supra* note 1.

82. See *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 365 (2010) (ruling that the First Amendment prohibits governments from restricting political independent expenditures by corporations, associations, or labor unions).

83. A frequently used legal “hook” at the local level is the common law of public nuisance. Perhaps the most successful local public nuisance case ever prosecuted was San Francisco’s case—brought in collaboration with several state attorneys general—

not new: localities already have standing to enforce, and have been successfully enforcing, various federal and state laws designed to protect the general public.<sup>84</sup> Corporate malfeasance across the nation has reached a point where legal scholars<sup>85</sup> and public lawyers<sup>86</sup> are pushing for increased *criminal* prosecution of corporate malfeasants. A policy proposal that contemplates not criminal, but merely civil consumer protection enforcement is more modest. Yet like criminal enforcement, engaging in more robust civil enforcement also has the potential for political upside.<sup>87</sup> After all, local voters who are pro-

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against the tobacco industry. See Morris, *supra* note 65, at 54. The case sought successfully to recover county public health dollars spent to treat tobacco-related illnesses. See *City & County of San Francisco v. Philip Morris*, 957 F. Supp. 1130, 1137 (N.D. Cal. 1998); Morris, *supra*, note 65, at 54. San Francisco has recovered in excess of \$260 million to date and used most of the money to rebuild Laguna Honda Hospital, a century-old county health care facility for low-income elderly and disabled persons. See JOHN THOMAS, LAGUNA HONDA HOSPITAL REPLACEMENT PROGRAM: QUARTERLY STATUS REPORT PRESENTED TO THE CITIZENS' GENERAL OBLIGATION BOND OVERSIGHT COMMITTEE 2-3 (2012), available at <http://www.sfcontroller.org/modules/showdocument.aspx?documentid=3329>; see also TOBACCO MASTER SETTLEMENT AGREEMENT PAYMENTS TO COUNTIES AND CITIES 1999-2013, available at [http://oag.ca.gov/sites/all/files/agweb/pdfs/tobacco/settlements/TMSAPC\\_REV.pdf?](http://oag.ca.gov/sites/all/files/agweb/pdfs/tobacco/settlements/TMSAPC_REV.pdf?).

84. To take two federal examples, localities have statutory standing to enforce the federal Clean Air Act, 42 U.S.C. §§ 7602(e), 7604(a)(1) (2006), and the Natural Gas Pipeline Safety Act, 15 U.S.C. § 45(a)(1) (2012). Additionally, in California, Mississippi, Missouri, New Jersey, South Carolina, Texas, and Virginia, localities have statutory standing to enforce little FTC Acts. See Appendix.

85. See Pulliam, *supra* note 33, at 1285 (urging state legislatures to eliminate the “injury in fact” standing requirement when a business competitor of the defendant seeks to bring a representative consumer claim for unfair business practices). In his Article, Professor Pulliam called on state legislatures to grant standing under state consumer protection statutes to business competitors, arguing that competitors are more likely than either individuals or governments to learn of unfair business practices and be in a position to sue. See *id.* at 1284-89.

86. See Press Release, Attorney Gen. Martha Coakley, Former Mortgage Broker Sentenced to Serve at Least Two Years in State Prison for Role in Elaborate Mortgage Fraud Scheme (Jan. 20, 2011), <http://www.mass.gov/ago/news-and-updates/press-releases/2011/former-mortgage-broker-sentenced-to-serve-at.html>; Monique Bryher, *Attorney General Brown Files Criminal Charges Against Mortgage Brokers*, EXAMINER.COM (Sept. 11, 2009), <http://www.examiner.com/fraud-in-los-angeles/attorney-general-brown-files-criminal-charges-against-mortgage-brokers>. See generally David Segal, *Financial Fraud Is Focus of Attack by Prosecutors*, N.Y. TIMES, Mar. 11, 2009, [http://www.nytimes.com/2009/03/12/business/12crime.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2009/03/12/business/12crime.html?pagewanted=all&_r=0).

87. To take the most prominent recent example, Massachusetts Senator Elizabeth Warren, a first-time candidate, ran for Senate on a platform of holding corporations accountable for harming consumers and the economy. See Katharine Q. Seelye, *Warren Defeats Brown in Massachusetts Senate Contest*, N.Y. TIMES, Nov. 6, 2012, <http://www.nytimes.com/2012/11/07/us/politics/elizabeth-warren-massachusetts->

business may also have a strong law-and-order perspective. When framed as law-and-order, local enforcement of the Act and little Acts may yield political benefits for the responsible elected officials.

## 2. Money

Litigation costs money. How can cash-strapped localities take on these cases? Many may be daunted by such a task and decline to use enforcement powers even if they had them. On the other hand, the absence of consumer protection enforcement is expensive for localities since they are particularly hard-hit by the negative consequences of unchecked corporate malfeasance.<sup>88</sup> Viewed in this way, local enforcement of unfair business practices laws may represent a wise local government investment. Moreover, if cities and counties choose their cases wisely, they should recoup their initial investment in relatively short order. Many of the Act and little Acts have penalty provisions that can be leveraged to reimburse localities (and ultimately, their constituents) for the cost of pursuing enforcement actions against corporate lawbreakers.<sup>89</sup> (These provisions also provide a healthy check on overreach by local public law offices, since the costs associated with unsuccessful cases would not be reimbursed.) State and federal governments might consider overcoming this financial barrier by lending seed money to localities willing to engage in consumer protection enforcement so they get their first docket of cases off the ground.

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senate-scott-brown.html?\_r=0. Although she was a Democrat running in a traditionally Democratic state, political analysts partly attributed her popularity to her promise to “hold the big guys”—corporations—“accountable.” *Id.*

88. See generally PAUL AIS, *supra* note 19 (documenting the devastating impact of the financial crisis on local governments). Kathleen Engel made this point with respect to predatory lending, when she wrote:

Predatory lenders penetrate communities and, like polluters, leave distressed properties and desperate people in their wake. The task of cleaning up falls to cities, yet predatory lending reduces the resources available for this clean up. Declining property values resulting from predatory lending mean reduced tax revenues just as abandoned buildings lead to increased demand for fire and police protection. City budgets are further strained when victims of predatory lending turn to cities for relief programs and protection from abusive lenders. In the language of economics, predatory lending imposes negative externalities on cities.

Engel, *supra* note 22, at 359–60.

89. See, e.g., CAL. BUS. & PROF. CODE § 17206 (West 2012).

### 3. Culture

Another practical concern is that local public law offices might not initially embrace (or even understand) a role of consumer law enforcement plaintiff. I have written that localities may be culturally resistant to taking on this role for several reasons.<sup>90</sup> First, local governments are often so cash-strapped it may be difficult for their law offices to imagine doing more. Second, local public law offices historically conduct almost entirely defensive litigation—that is, they defend the locality when it is sued—and are not used to being plaintiffs.<sup>91</sup> But that resistance may be waning. As more and more localities have engaged in affirmative litigation to the benefit of constituents and their own bottom-lines, a growing number local public law offices are open to plaintiff's litigation.<sup>92</sup> But in the end, since each locality is the architect of its own docket, those that would rather not participate could simply decline to use their new enforcement authority.

### 4. Sophistication

Local public enforcement of the Act and little Acts raises the practical barrier that many localities—and local public law offices—may lack the sophistication to go after the kinds of complex corporate schemes federal and state governments are accustomed to tackling. That problem undoubtedly exists for many if not most cities and counties at present. Ultimately, each locality would have to decide what kinds of cases it can and cannot bring. The broad, flexible language of the Act and little Acts, which prohibit “unlawful,” “unfair,” or “fraudulent” business practices, leave room for each locality to pursue complex cases,<sup>93</sup> simple cases,<sup>94</sup> or some of each,

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90. See generally Morris, *supra* note 65.

91. See *id.* at 52 (arguing that “often it is institutional culture, not legal barriers, that bounds city and county law office activities”); Adam Liptak, *Ban on Gay Marriage Led Lawyers to Shift Role*, N.Y. TIMES, Mar. 19, 2013, <http://www.nytimes.com/2013/03/19/us/san-franciscos-role-in-opposing-gay-marriage-ban-led-way-to-supreme-court.html?pagewanted=all> (quoting the San Francisco City Attorney's point that in order to pursue plaintiff's cases a local public law office must first step out of its traditional defense role).

92. See Morris, *supra* note 65, at 60.

93. See, e.g., Complaint for Injunctive Relief and Civil Penalties for Violations of Business and Professions Code Section 17200, *People v. Nat'l Arbitration Forum*, No. CGC-08-473569 (Cal. Super. Ct. Mar. 24, 2008) (pursuing a complex scheme by bank and arbitration company); Robert Berner & Brian Grow, *Banks vs. Consumers (Guess Who Wins)*, BUS. WK., June 15, 2008, <http://www.businessweek.com/stories/>

depending on its capacity and expertise. Importantly, as explained earlier, the “lack of sophistication” argument is vulnerable to being turned on its head. The flexibility of a “national section 17200” would provide opportunities for an ambitious locality to expand its economic and financial sophistication over time by tracking, case-by-case, the trends, costs, and benefits of evolving business practices. Local governments’ increased sophistication would ultimately benefit their constituents.

### III. THEORETICAL CONCERNS DISAGGREGATION RAISES

#### A. Localism Concerns: What About Local Autonomy?

The central idea in this Article is a policy idea, namely that localities can and should be invited into state and federal consumer protection enforcement. This, however, is related to a broader theoretical ambition—which is to craft a coherent, workable, and constitutionally sound theory of the role localities do and should play in our constitutional democracy. Put another way, we must move towards a healthy and modern localism. That goal requires us to grapple with potential localist critiques of proposals like the one presented here.

The most serious localist argument against expanding local enforcement of state and federal consumer protection laws is that doing so would not further local autonomy and may even undermine it. “Autonomy” has been a major theme in local government scholarship since Gerald Frug revived the field in 1980.<sup>95</sup> Local government scholars have, for example, opposed local enforcement of state and federal constitutional law on the ground that it would undermine the push for more local autonomy.<sup>96</sup> Needless to say, a

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2008-06-04/banks-vs-dot-consumers-guess-who-wins. For a list of the wide range of cases San Francisco has pursued under section 17200, see Morris, *supra* note 65, at 54–56.

94. See generally *People ex. rel. Herrera v. Stender*, 152 Cal. Rptr. 3d 18 (Cal. Ct. App. 2013) (pursuing a relatively simple action against a law firm and an attorney for unfair business practices vis-à-vis immigration clients).

95. See generally Gerald Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1059 (1980).

96. See e.g., David J. Barron, *Why (and When) Cities Have a Stake in Enforcing the Constitution*, 115 YALE L.J. 2218, 2232 (2006) (arguing that local constitutional enforcement undermines localism); Richard C. Schragger, *Cities as Constitutional Actors: The Case of Same-Sex Marriage*, 21 J.L. & POL. 147, 152–53 (2005). But see Kathleen S. Morris, *The Case for Local Constitutional Enforcement*, 47 HARV. C.R.-

purely localist approach to consumer protection legislation would be to enact local law and then defend those laws against the inevitable powers and preemption challenges.<sup>97</sup> This Article takes autonomy seriously, and offers two observations on that subject in the context of localism.

The first observation is that the traditional localist account of local autonomy seems to focus, sub silentio, on legislative autonomy. That is, by “autonomy” local government scholars seem to mean the ability to declare what the law is at a local level and seal the locality off from state and federal interference.<sup>98</sup> Not all autonomy, however, is expressed legislatively. Localities can also exercise executive autonomy.<sup>99</sup> In the context of civil law enforcement, local executive autonomy takes forms such as exercising prosecutorial discretion, prosecuting public interest litigation, and negotiating settlements in the public interest. Viewed this way, local enforcement of federal and state consumer protection law is a form of local (executive) autonomy.<sup>100</sup>

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C.L. L. REV. 1 (2012) (arguing that local constitutional enforcement favors local interests overall).

97. See Cal. Fed. Sav. & Loan Ass’n v. City of Los Angeles, 812 P.2d 916, 925–31 (Cal. 1991) (finding that the City of Los Angeles, a home rule city, imposed a local licensing tax on a savings and loan association and striking down the ordinance on state law preemption grounds, finding bank taxes to be a matter of statewide rather than local concern); Diller, *supra* note 49, at 1114–15 (urging a more relaxed approach to state preemption to allow for greater local experimentation because “when a city adopts a new policy that differs from state law and may harm some segment of the business community, a preemption challenge is almost certain to follow”). See generally Engel, *supra* note 22; Miller & Beals, *supra* note 49 (discussing the evolution of local cable television laws); Warren, Gorham, & Lamont, Inc., *supra* note 49, at 345 (discussing the preemption of local laws regulating banks).

98. See David J. Barron, *Reclaiming Home Rule*, 116 HARV. L. REV. 2255, 2257 (2003) (equating Home Rule with “autonomy”); Gerald Frug, *Decentering Decentralization*, 60 U. CHI. L. REV. 253, 254 (1993) (“[The traditional account of decentralized power] presents localities as being able to do whatever they want: they can act in their own self-interest, cooperate with others on their own terms, and cause harm to those who disagree with them. The political term for this form of autonomy is ‘sovereignty.’”).

99. See generally Rodriguez, *supra* note 69 (dissecting local § 287(g) agreements with Immigrations and Customs Enforcement, and discussing how local executive autonomy often expresses itself through the ability to move freely in the marketplace by entering into private and public contracts).

100. Local enforcement of federal and state law may not pose the kind of threat to state and federal power that local legislative autonomy does. At a basic level, local legislative autonomy sends a “keep out” message. Local enforcement sends a very different message, namely, “let’s fix this.” The latter message may be more likely to realize the full benefits of cooperative federalism.

Needless to say, if “local autonomy” means only local legislative autonomy, then my proposal does nothing to advance it. But if that term also includes executive autonomy, my proposal suggests that in some areas—such as consumer protection—it might be worth giving up autonomy on the legislative side of local government to gain more autonomy on the executive side. Local enforcement of federal and state consumer protection laws is a good example of a policy that would simultaneously undermine local legislative autonomy and strengthen local executive autonomy.

A second observation about localism and autonomy is that local government scholars tend to treat maximizing local autonomy as an end in itself, rather than as a path to power.<sup>101</sup> “Power” and “autonomy” are not synonymous and they do not always rise and fall together.<sup>102</sup> Localism’s ultimate goal may be better aimed at maximizing local *power*—rather than local *autonomy*. If we were to set aside local autonomy as the ultimate goal of localism, and instead define localism as the attainment of local power, we might shift our focus to policy alternatives that increase power, whether or not they increase autonomy. In each circumstance, rather than asking: what is the clearest path to local autonomy in this context?; we would ask: what is the clearest path to local power in this context?

In the consumer protection context, there are two potential paths to local power: (1) enacting local consumer protection laws (then fighting powers and preemption battles), or (2) using standing doctrine to leverage state and federal consumer protection laws for the benefit of local constituents. Increasing leverage rather than autonomy would not only be easier to defend in court, it might actually make better policy sense. As business moves nationally and internationally, we may be better off setting basic standards at the federal level and enforcing those standards at the federal, state, and local levels rather than setting three layers of substantive standards. By contrast, in other contexts, it may be a better policy to allow local legislative autonomy.<sup>103</sup> In sum, perhaps instead of asking “what will maximize local autonomy,” a healthy, modern localism asks, “is

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101. See Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1 (1990) (impliedly equating autonomy and power).

102. See Morris, *supra* note 96.

103. See Rodriguez, *supra* note 69 (arguing in favor of local legislative autonomy in the immigration context).



autonomy, leverage, or some other means the best way to maximize local power?”

### B. Federalism Concerns: Uniformity, Over-Enforcement, and Parochialism

In addition to localism concerns, local enforcement of federal and state consumer protection laws raises at least three familiar federalism concerns: (1) multiple enforcers of the Act and little Acts would disrupt the existing uniformity of consumer protection law, (2) the laws would be over-enforced as compared with the optimal level of enforcement, and (3) localities would be prone to parochialism in the exercise of prosecutorial discretion.

Lack of uniformity and over-enforcement concerns are also at play when considering state enforcement of federal law, so federalism scholars have begun to take an empirical look at these questions. There are few data, and to the extent they exist they are inconclusive.<sup>104</sup> In the absence of data, it makes sense build in common-sense legal safeguards that minimize the risks of dis-uniformity and over-enforcement.

There is no question that allowing localities to enforce federal and state consumer protection laws will weaken higher-level control. This is an inevitable trade-off of all disaggregation. As Stephen Lee has written in the immigration context a “diminished capacity for oversight is often one of the trade-offs involved in disaggregating enforcement authority. While such a design handicaps a principal’s powers of oversight, it often creates a competitive environment among agents, which creates incentives for the agents to produce better outcomes while deepening and broadening their expertise.”<sup>105</sup> Those dangers should be controlled through legislative safeguards such as notice provisions, certification provisions, or contract-controlled local enforcement.<sup>106</sup>

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104. See generally Amanda M. Rose, *State Enforcement of National Policy: A Contextual Approach (with Evidence from the Securities Realm)*, 97 MINN. L. REV. 1343 (2013).

105. Steven Lee, *Monitoring Immigration Enforcement*, 53 ARIZ. L. REV. 1089, n.104 (2011).

106. See generally Rodriguez, *supra* note 69 (discussing that some state statutes require localities to provide notice before filing suit while others require local public law offices to go through a certification process before commencing enforcement of state law, and how a contract-based approach might be akin to so-called § 287(g) agreements, which permit local enforcement of federal immigration laws).

Turning finally to parochialism, as a practical matter, “[a]ny argument for enhancing local autonomy requires a leap of faith that local political institutions are worthy of that autonomy.”<sup>107</sup> Thus, to disaggregate consumer protection enforcement is to embrace a robust vertical federalism, because each public laws office—federal, state and local—would be permitted to exercise prosecutorial discretion based on the needs and values of its constituent group. Put another way, one person’s “parochialism” is another person’s “representative democracy.”<sup>108</sup>

Even accepting parochialism as a real threat of disaggregation, it may be that there are some contexts—such as consumer protection enforcement—in which we may be able to tolerate a little parochialism. After all, no matter who files a consumer protection case, it is always going to be fundamentally built on facts that allege one or more business actors, operating in a particular place, are harming consumers and businesses in that same place. To some degree, consumer protection enforcement may be inherently parochial, and thus the perfect place to experiment with disaggregation of enforcement.

#### CONCLUSION

Localities and their constituents need greater consumer protection enforcement. But consumer protection laws need not be enacted at the local level to be enforced there. Localities may not be well-positioned to enact consumer protection statutes, but they are uniquely well-positioned to enforce them. Perhaps the best way to better control corporate malfeasance is not through local laws, but local watchdogs.

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107. Davidson, *supra* note 25, at 1019.

108. See Lemos, *supra* note 20, at 745 (discussing a similar idea).

## APPENDIX

## Fifty-State Survey: State Consumer Protection Laws

State	Consumer Protection Statute	Description
AL	ALA. CODE §§ 8-19-1 to 8-19-15	The Alabama Deceptive Trade Practices Act has a broad definition of deceptive trade practices, ALA. CODE § 8-19-5 (LexisNexis 2002), and it grants enforcement authority to the Attorney General and District Attorneys. § 8-19-4(a)(1)-(a)(3). The penalty for violating the Act is no more than \$2,000. § 8-19-11(b). There is a one year statute of limitations. § 8-19-14.
AK	ALASKA STAT. §§ 45.50.471 to 45.50.561	ALASKA STAT. ANN. §§ 45.50.471 to 45.50.479 (2012) list many unlawful acts related to consumer protection. The Attorney General of Alaska has authority to enforce the consumer protection laws. § 45.50.501(a). Additionally, the Code provides for private and class actions. § 45.50.531(a). The statute of limitations for private actions is two years. <i>Id.</i> at § 45.50.531(f). A victorious plaintiff may be granted injunctive relief and attorney fees. §§ 45.50.535, 45.50.537. These consumer protection laws cannot be waived. § 45.50.542. The Attorney General can recover between \$1,000 and \$25,000 for violations of the consumer protection laws. § 45.50.551(b).
AZ	ARIZ. REV. STAT. ANN. §§ 44-1521 to 55-1534	The Attorney General of Arizona has enforcement authority. ARIZ. REV. STAT. ANN. § 44-1524(A) (2013). The state may recover up to \$10,000 for violations. § 44-1531(A).

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AR	ARK. CODE ANN. §§ 4-88-101 to 4-88-207	The Attorney General of Arkansas, through the Consumer Counsel, has civil enforcement authority of deceptive trade practices laws. ARK. CODE ANN. § 4-88-104 (2011). The Consumer Counsel is an administrative agency tasked with representing and protecting “the state, its subdivisions, the legitimate business community, and the general public as consumers.” § 4-88-105(c). The Counsel has investigatory and enforcement authority. § (d)(3). Violations of the Deceptive Trade Practices Chapter are also Class A misdemeanors. § 4-88-103. Penalties paid to the state for violations are not to exceed \$10,000 and expenses. § 4-88-113(a)(3). Moreover, “[a]ny person who suffers actual damage or injury as a result of an offense or violation as defined in this chapter has a cause of action to recover actual damages, if appropriate, and reasonable attorney’s fees.” § 4-88-113(f). The statute of limitations is five years. § 4-88-115. Finally, there are enhanced penalties when elder or disabled persons are the targets of deceptive trade practices. §§ 4-88-201 to 207.
CA	CAL. CIV. CODE §§ 1750 to 1785; CAL. BUS. & PROF. CODE §§ 17200–509	In addition to CAL. BUS. & PROF. CODE § 17200, the Civil Code provides that “[a]ny consumer” harmed by unfair trade practices may bring an action to recover damages and/or injunctive relief. CAL. CIV. CODE § 1780(a) (West 2009 & Supp. 2013). Individuals may bring class actions too. § 1781(a). The statute of limitations is three years. § 1783.
CO	COLO. REV. STAT. § 6-1-101 to 6-1-115	The Attorney General and District Attorneys of Colorado have authority to enforce Colorado’s Consumer Protection Act. COLO. REV. STAT. § 6-1-103 (2013). The Attorney General and district attorneys are granted broad investigatory authority, too. §§ 6-1-107(1), 6-1-108(1). The remedies for violations of the Colorado Consumer Protection Act include injunctive relief and penalties not to exceed \$2,000 per violation. §§ 6-1-110(3), 6-1-112(a). There are also penalties for up to \$10,000 for violating an injunction and for deceptive trade violations to the elderly. § 6-1-112(b). There is a three-year statute of limitations. § 6-1-115.

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CT	CONN. GEN. STAT. ANN. §§ 21A-1 to 21A-12D; 42-110A to 42-110q	Connecticut established a Department of Consumer Protection that has authority to enforce consumer protection laws and regulations. CONN. GEN. STAT. ANN. §§ 21A-1(a), 21A-7(1) (West 2006 & Supp. 2013). The Commissioner has authority to order investigations into deceptive trade practices. § 42-110d(a). Any person harmed by unfair trade practices may bring a private or class action seeking damages; there is a three year-statute of limitations. § 42-110g(a)-(b). Moreover, “[t]he various state’s attorneys and prosecuting attorneys shall lend to the commissioner or Attorney General such assistance as either may request in the commencement and prosecution of actions pursuant to this chapter.” § 42-110 <i>l</i> .
DE	DEL. CODE ANN. tit. 6, § 2501 to § 2598	The Attorney General of Delaware may enforce consumer fraud laws. DEL. CODE ANN. tit. 6, § 2517(a) (2005). All money received from such enforcement shall be placed in the Consumer Protection Fund which shall be used to fund consumer fraud enforcement. tit. 6, § 2527(a) (Supp. 2012). Any individual harmed by deceptive trade practices may seek injunctive relief, and the Attorney General may bring an action whenever a deceptive trade practice is likely to harm any person. tit. 6, § 2533(a), § 2533 (d). The Attorney General may also seek civil penalties for no more than \$10,000 for violations. § 2533(e). Formerly, tit. 6, § 2598 provided for civil penalties of up to \$25,000 for violations or injunctions enforcing consumer protection laws; however, 77 Laws 2010, ch. 282, § 4 repealed this statute in June 2010.
FL	FLA. STAT. ANN. §§ 501.001 to 501.2101	The Deceptive and Unfair Trade Practices Chapter defines “enforcing authority” as the state attorney and Department of Legal Affairs. FLA. STAT. ANN. § 501.203(2) (West 2010). The state attorney and Department of Legal Affairs may bring actions for injunctive relief and actual damages, and the statute of limitations is two years. § 501.207. They may also seek penalties of up to \$10,000 for violations of Deceptive and Unfair Trade regulations. § 501.2075. The penalties are increased for violations against the elderly. § 501.2077. All funds received through enforcement of the deceptive trade laws shall be placed in funds that accrue to the state. § 501.2101.

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GA	GA. CODE ANN. §§ 10-1-370 to 10-1-407	Georgia adapted the Uniform Deceptive Trade Practices Act. GA. CODE ANN. § 10-1-370 (2009 & Supp. 2013). A person likely to be damaged by a deceptive trade practice may seek injunctive relief. § 10-1-737. The administrator (it is unclear which organization the administrator is the oversees; the statute just says that he/she will “perform all functions formerly performed by the Consumer Services Unit”), advised by the Consumer Advisory Board, may issue orders prohibiting unfair or deceptive business practices and seek injunctive relief from courts. §§ 10-1-395, 10-1-397. The administrator may also be granted civil penalties up to \$5000 per violation. § 10-1-397. There is a two-year statute of limitations. § 10-1-401.
HI	HAW. REV. STAT. ANN. §§ 487-2 to 487-16	Hawaii established an Office of Consumer Protection. HAW. REV. STAT. ANN. § 487-2 (West 2008 & Supp. 2012). “The director of the office of consumer protection is designated the consumer counsel for the State and shall represent and protect the State, the respective counties, and the general public as consumers.” § 487-5. Accordingly, it would be difficult to pass statutes granting local governments enforcement authority because Hawaii has already explicitly recognized the Director as localities’ representation for consumer protection purposes.
ID	IDAHO CODE ANN. §§ 48-601 to 48-619	The Idaho Consumer Protect Act defines and governs unfair methods of competition, solicitation, tax return preparation, unfair telephone services, unfair bulk email advertisements, mortgage loan modification fees, and unconscionable practices. IDAHO CODE ANN. §§ 48-603A to 48-603F (2003 & Supp. 2013). The Attorney General of Idaho may bring actions for declaratory judgment, injunctive relief, and damages. The state may recover damages on behalf of consumers and up to \$5000 in civil penalties. § 48-606. The court may also “[m]ake such orders or judgments as may be necessary to compensate any consumers for actual damages.” § 48-607(2). Any purchaser or lessee who suffers loss due to unfair practices may also bring actions for restitution, and the court may award punitive damages to such consumers. § 48-608(1). Civil penalties may be up to \$10,000 per violation. § 48-615.

IL	815 ILL. COMP. STAT. ANN. §§ 505/2 to 505/12	The Consumer Fraud and Deceptive Business Practices Act defines a number of unlawful practices. 815 ILL. COMP. STAT. ANN. §§ 505/2 to 505/2Jjj (West 2004 & Supp. 2013). The Attorney General or a State's Attorney may bring actions for injunctive relief, and the court may impose a civil penalty of up to \$50,000 (the statute does not say that the civil penalty is <i>per violation</i> ). § 505/7. Any person suffering actual damages from a violation of the Act may bring an action for damages. § 505/10a. There is a three-year statute of limitations. <i>Id.</i>
IN	IND. CODE ANN. § 24-5-0.5-1	The Indiana Deceptive Consumer Sales Act (DCSA) defines thirty-six different categories of "deceptive acts" that are unlawful. IND. CODE ANN. §§ 24-5.-0.5-3 (LexisNexis 2006 & Supp. 2012). Any person suffering from a deceptive act may bring an action for actual damages; if deception as willful, damages may be up to the greater of triple the actual damages or \$1000. § 24-5-0.5-4(a-b). The court may award reasonable attorney fees. § 24-5-0.5-4(j). Private parties can bring class actions. § 24-5-0.5-4(b). The Attorney General may bring an action to enjoin a specific deceptive act, or, if there is a pattern of such acts, to issue an injunction ordering the supplier to return the unlawfully received money to consumers. § 24-5-0.5-4(c). The statute of limitations is six months. § 24-5-0.5-5.
IA	IOWA CODE ANN. §§ 714.16 to 714.16A	Section 714 of the Iowa Code chapter on theft, fraud, and related offenses gives a very broad definition of what constitutes consumer fraud, including the intent that others rely upon "the concealment, suppression, or omission of a material fact" related to the lease, sale, or advertisement. IOWA CODE § 714.16(2)(a) (West 2003 & Supp. 2013). "The burden is on the person making the representation to demonstrate that a reasonable basis for the claim existed." <i>Id.</i> Enforcement power is with the attorney general. § 714.16(4)-(6). A private party may bring civil actions and the attorney general can request civil remedies of up to \$40,000 per violation. § 714.16(7). Section 714.16A allows the Attorney General to impose an additional civil penalty up to \$5000 per violation.

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KS	KAN. STAT. ANN. §§ 50-623 to 50-643	<p>The Kansas Consumer Protection Act instructs that it should be construed liberally. KAN. STAT. ANN. § 50-623 (West 2008). The list of “deceptive acts and practices” is extensive (fourteen categories), and includes representations made knowingly or with reason to know that it could be deceptive. § 50-626(b). Unlawfulness is not contingent on whether the consumer has actually been misled by the deceptive act. <i>Id.</i> Enforcement power is with the Attorney General. § 50-629. A consumer may bring a civil action and recover damages (though not for class actions). § 50-634(b). In a class action, consumer may recover an injunction and appropriate ancillary relief, but not damages. § 50-634(c).</p>
KY	KY. REV. STAT. ANN. §§ 367.110 to 367.360	<p>The Kentucky Consumer Protection Act provides for the creation of a Consumers’ Advisory Council and a Division of Consumer Protection of the Department of Law for “aiding in the development of preventative and remedial consumer protection programs and enforcing consumer protection statutes.” KY. REV. STAT. ANN. § 367.120(1) (LexisNexis 2008). The Consumers’ Advisory Council is made up of state citizens, chaired by the Attorney General, and tasked with publishing an annual report on the state of consumer affairs in the state. § 367.140. The Department of Law coordinates the consumer protection activities of the state, county, and city government; advises agencies and officials; conducts investigations, research studies, and conferences; acts as a central clearinghouse of information; and conducts consumer education programs. § 367.150. The Attorney General has broad power to issue an injunction in the public interest under section 367.190, and to investigate the matter thoroughly under section 367.240. Anyone who was harmed by practices made unlawful by this Act may bring a civil action and recover actual damages and punitive damages. The statute of limitations is two years since violation. § 367.220.</p>
LA	LA. REV. STAT. ANN. §§ 51:1401 to 51:1425	<p>The Louisiana Unfair Trade Practices and Consumer Protection Law voids any contract made in violation of its provisions. LA. REV. STAT. ANN. § 51:1403 (Supp. 2013). The Attorney General has power to investigate, enforce, and educate the public. Section 51:1404 makes rules interpreting this provision. LA. REV. STAT. ANN. § 51:1404 (2003). Section 51:1405 allows for the issuance of injunctions. Requests for civil penalties can be increased if victim is elderly. § 51:1407. Individuals may bring private civil actions, not as representatives of a class. § 51:1409.</p>



ME	ME. REV. STAT. ANN. tit. 10, §§ 1211-1216	Maine adopted the Uniform Consumer Protection Act. Other discrete consumer protection laws have separate enforcement statutes, but these provisions are scattered and barebones. <i>See generally</i> ME. REV. STAT. tit. 10, §§ 1211-1215 (2009 & Supp. 2012).
MD	MD. CODE ANN., COM. LAW §§ 13-101 to -501	The Maryland Consumer Protection Act gives weight to the FTC and federal courts' interpretation of "unfair or deceptive trade practices" but says the term should be construed liberally. MD. CODE ANN., COM. LAW § 13-105 (LexisNexis 2005 & Supp. 2012). It establishes a Division of Consumer Protection in the Office of the Attorney General. § 13-201. The Division can sue for an injunction under section 13-406, and individuals can bring action for damages and reasonable attorney's fees under section 13-408 (2013). Penalties are limited to \$1000 per violation, and \$5000 per subsequent violation. § 13-410. Criminal penalties of \$1000 or up to one year in prison are possible. § 13-411.
MA	MASS. GEN. LAWS ANN. ch. 93A, §§ 1-11	Massachusetts declares unlawful all "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." MASS. GEN. LAWS ANN. ch. 93A, § 2 (LexisNexis 2012 & Supp. 2013). The law should be construed and amended with an eye to the FTCA. <i>Id.</i> The Attorney General can bring actions on behalf of individuals for injunction and actual damages. Ch. 93A, § 4. Individuals can bring civil actions for money damages and attorney's fees and injunction. Ch. 93A, § 9, § 11. Individuals can bring class actions. Ch. 93A, § 11. Civil penalties can go up to \$5000 per violation (and up to \$10,000 per violation for failure to heed injunction) and reasonable costs of litigation and attorney's fees. Ch. 93A, § 4.
MI	MICH. COMP. LAWS ANN. §§ 445.901-.922	The Michigan Consumer Protection Act gives a long detailed list of what constitutes "unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce." MICH. COMP. LAWS ANN. § 445.903 (West 2011 & Supp. 2013). The Attorney General can bring suit for fine of up to \$25,000. § 445.905. The business has a chance to voluntarily desist and avoid suit. § 445.906. The Attorney General can bring a class action on behalf of individuals under section 445.910, and individuals can bring actions for injunction and damages on behalf of themselves under section 445.911. Prosecuting attorneys can also initiate actions. § 445.915. The statute of limitations is the later of six years after occurrence of the practice or one year after the last payment in a transaction involving the practice. §§ 445.910-.911.

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MN	MINN. STAT. ANN. §§ 325D.09-.29	The Minnesota law is not broadly defined. It bans misrepresentation of price, quality of merchandise, and misrepresentation of “the true nature of [a] business, either by use of the words manufacturer, wholesaler, broker, or any derivative thereof or synonym therefor, or otherwise.” MINN. STAT. ANN. §§ 325D.12–325D.13 (West 2011 & Supp. 2013). Individuals can sue for injunction and damages. § 325D.15. The law does not provide for penalties or actions by the attorney general or other state attorneys.
MS	MISS. CODE ANN. §§ 75-24-1 to -29	Mississippi established an Office of Consumer Protection. <i>See</i> MISS. CODE ANN. § 75-24-1 (West 1999), which enforces a ban on “unfair methods of competition affecting commerce and unfair or deceptive trade practices in or affecting commerce.” § 75-24-5 (listing thirteen examples). The Attorney General has power to bring suit. § 75-24-9. District and county attorneys can bring suit. § 75-24-21. Individuals can bring suit for personal damages after trying informal adjudication first. § 75-24-15. Class actions are not permitted. § 75-24-15. Penalties are up to \$10,000 per violation and up to double this if violation was willful; half of the money goes to the Office of Consumer Protection, and the other half goes to the General Fund. § 75-24-19. Local courts are reimbursed for their costs. § 75-24-21. The statute provides for a fine of up to \$1000 for a knowing and willful violation, and up to five years in prison for subsequent violations. § 75-24-20.
MO	MO. ANN. STAT. §§ 407.010-.309	The Missouri law prohibits “the act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose.” MO. ANN. STAT. § 407.020 (West 2011). Individuals, local attorneys, and circuit attorneys, as well as the Attorney General, can enforce the Act. § 407.020. Individuals can bring private civil actions and class actions for personal losses, and can be awarded injunction, actual damages, punitive damages, and attorney’s fees. § 407.025. Penalties are up to \$1000 per violation. § 407.100. Additionally, the statute imposes a fine of \$5000 per violation for failure to comply with injunction. § 407.110. All penalties go to the Merchandising Practices Revolving Fund and all other costs recovered go into the State Treasury. § 407.140.

MT	MONT. CODE. ANN. §§ 30-14-101 to -143	<p>The Montana Consumer Protection Act protects against all “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” MONT. CODE. ANN. § 30-14-103 (West 2009 &amp; Supp. 2012). Montana hinges its definition to the FTCA; thus any new rules must be consistent with the FTCA. § 30-14-104. The Act is enforceable by the entire Department of Justice. §§ 30-14-111, 30-14-102 (defining “Department” and “County Attorneys”). The Act is enforceable pursuant to a request by the Department and individuals. §§ 30-14-121 to 30-14-133. Moreover, County Attorneys in counties with over thirty million dollars of taxable value may designate an employee to act as a full-time investigator. § 30-14-122. Courts can grant injunctions and award damages and reasonable attorneys’ fees. §§ 30-14-131 to 30-14-133. There are penalties of up to \$10,000 for willful violations and failure to comply with injunctions or TROs, and a \$5000 penalty with up to one year imprisonment for failure to comply with the Act generally (willful or not). § 30-14-142. Civil fines, costs, and fees go to the Department or the county fund, depending on where action was commenced. § 30-14-143.</p>
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NE	NEB. REV. STAT. §§ 59-1601 to 59-1623, 87-301 to 87-306	<p>The Nebraska Consumer Protection Act makes unlawful certain “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” NEB. REV. STAT. §§ 59-1602 to 1606 (2012). The Nebraska Attorney General may enforce this Act in the name of the state. § 59-1608. Recoveries received from the enforcement of the Act shall be placed in the State Settlement Cash Fund or the State Settlement Trust Fund. §§ 59-1608.04, 59-1608.05. The State may seek actual damages, injunctive relief, and civil penalties of up to \$25,000 for violations of sections 59-1603 or 59-1604, and up to \$2000 for violations of section 59-1602. §§ 59-1609, 59-1610, or 59-1614. In general, the statute of limitations is four years. § 59-1612. Nebraska adopted the Uniform Deceptive Trade Practices Act. §§ 87-301 to 87-306. The Uniform Deceptive Trade Practices Act does not preempt the state’s Consumer Protection Act, which makes unlawful certain deceptive trade practices, defined in section 87-302, including unconscionable acts. § 87-303.01. Anyone who violates the Act is guilty of a Class II misdemeanor and subject to a civil penalty of not more than \$2000 for each violation. § 87-303.11. Any person “likely to be damaged by a deceptive trade practice of another” can bring an action for injunctive relief. § 87-303. “Proof of monetary damage, loss of profits, or intent to deceive is not required.” <i>Id.</i> The statute of limitations for civil actions is four years. § 87-303.10. The Attorney General has, in addition to the power to bring a civil action, has the power to require documentation from anyone he or she believes is engaging in a deceptive practice or unconscionable act and issue a cease and desist order without a hearing. §§ 87-303.02 to 303.03.</p>
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NV	NEV. REV. STAT. ANN. §§ 598.0903 to 0999	<p>Deceptive trade practices are defined in great detail in NEV. REV. STAT. ANN. §§ 598.0915 to .0925 (LexisNexis 2010 &amp; Supp. 2011). Those practices listed are also supplemented by practices “actionable at common law or defined as such in other statutes” of the state. § 598.0953. Deceptive trade practices may be investigated by the Commissioner of Consumer Affairs, the Director of the Department of Business and Industry or the Attorney General. § 598.096. The Attorney General may additionally bring a criminal proceeding to enforce the Act, or may bring an action on behalf of the state to obtain injunctive relief or civil penalties. § 598.0963. In addition, county district attorneys can, in certain circumstances, bring actions on behalf of the state to obtain injunctive relief or civil penalties. § 598.0985. A person who violates a court order or injunction issued pursuant to this Act is subject to a civil penalty of not more than \$10,000 for each violation, and a person found to have willfully engaged in a deceptive trade practice is subject to a civil penalty of not more than \$5000 for each violation. § 598.0999. If the deceptive trade practice is found to be toward an elderly or disabled person, there is a civil penalty of not more than \$12,500 for each violation. § 598.0973. Any funds recovered in a civil action, except criminal fines and restitution, are deposited in a State General Fund and are used only to offset the costs of enforcing the Act. § 598.0975. The statute of limitations for bringing civil actions under this Act is six years. § 11.190.</p>
NH	N.H. REV. STAT. ANN. §§ 358-A:1 to A:13	<p>A number of practices are defined as unfair methods of competition or unfair or deceptive in the Act. N.H. REV. STAT. ANN. § 358-A:2 (2008 &amp; Supp. 2012). The Attorney General may bring an action for injunctive relief or for “an order of restitution of money or property to any person or class of persons injured.” § 358-A:4. Upon a finding that a person has engaged in an unlawful practice, the court may award the state civil penalties up to \$10,000. <i>Id.</i> In addition, “[a]ny person injured by another’s use of any method, act or practice declared unlawful under this chapter may bring an action for damages and for such equitable relief, including an injunction.” § 358-A:10. A victorious plaintiff will recover the amount of actual damages or \$1000, whichever is greater. <i>Id.</i> “If the court finds that the use of the method of competition or the act or practice was a willful or knowing violation of this chapter, it shall award as much as 3 times, but not less than 2 times, such amount.” <i>Id.</i> A three year statute of limitations applies to violations of the Act. § 358-A:3(IV-a).</p>

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NJ	N.J. STAT. ANN. §§ 2A:14-1; 56:8-1 to 56:8-25	A number of practices are defined as unlawful, “whether or not any person has in fact been misled, deceived or damaged thereby.” N.J. STAT. ANN. §§ 56:8-2 to 56:8-2.10 (West 2012 & Supp. 2013). The Attorney General may investigate potential violations and hold hearings. § 56:8-3 to 8-3.1. He may assess a penalty against the person alleged to have committed the violation, and any amount collected goes to the State Treasury “for the general purposes of the State.” § 56:8-3.1. Any person who violates the act is subject to a civil “penalty of not more than \$10,000 for the first offense and not more than \$20,000 for the second and each subsequent offense.” § 56:8-13. In addition, persons harmed and able to show an “ascertainable loss” may initiate an action, and there is an additional automatic imposition of treble damages. § 56:8-19. “[T]he director of any certified county or municipal office of consumer affairs” can also bring a suit. § 56:8-14.1. The statute of limitations for bringing a cause of action under the Act is six years in New Jersey. § 2A:14-1.
NM	N.M. STAT. ANN. §§ 37-1-3 to 37-1-4; 57-12-1 to 57-12-26	The Unfair Practices Act makes unlawful certain “unfair or deceptive” and “unconscionable trade practice[s].” N.M. STAT. ANN. §§ 57-12-2 to 12-3 (West, Westlaw through 2013 First Reg. Sess.). The Attorney General may bring actions in the name of the state for injunctive relief. § 57-12-8. In addition, a person “likely to be damaged by an unfair or deceptive trade practice or by an unconscionable trade practice of another” may bring suit for an injunction without needing to show “monetary damage, loss of profits or intent to deceive.” § 57-12-10. Any person “who suffers any loss of money or property” as a result of an unlawful practice under this Act “may bring an action to recover actual damages or the sum of one hundred dollars (\$100), whichever is greater,” and if the practice was willful, the court may award up to three times actual damages or \$300, whichever is greater. <i>Id.</i> If a person willfully used a method unlawful under the Act, the Attorney General may recover from him a civil penalty of up to \$5000 per violation on behalf of the state. § 57-12-11. The statute of limitations for bringing claims is six years for written contracts and four years for unwritten contracts. §§ 37-1-3, 37-1-4.

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NY	N.Y. GEN. BUS. LAW §§ 349 to 350-F-1	New York law makes “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service” unlawful. N.Y. GEN. BUS. LAW § 349 (McKinney 2012). Both the Attorney General and injured persons may bring actions for injunctive relief, restitution, or damages. <i>Id.</i> The Attorney General can recover civil penalties of up to \$5000 for each violation, which shall accrue to the state. § 350-d. Individuals can recover actual damages or fifty dollars, whichever is greater, but if the court finds the defendant willfully or knowingly violated the Act, the court can increase the award of damages “to an amount not to exceed three times the actual damages up to one thousand dollars.” § 349. If the unlawful conduct is against an elderly person, the defendant is additionally liable for up to \$10,000 in civil penalties, which go towards a state treasury fund used solely for the investigation and prosecution of consumer frauds against elderly persons. § 349-c (McKinney 2012). The statute of limitations in New York is six years. N.Y. C.P.L.R. § 213 (McKinney 2003).
NC	N.C. GEN. STAT. §§ 75-1.1; 75-8 to 75-16.2	North Carolina law declares all “[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce” unlawful. N.C. GEN. STAT. ANN. § 75-1.1 (2012). The Attorney General has the power to initiate civil actions for injunctive relief and damages. § 75-14. He also has the power to “call to his assistance in the performance of any of” his duties the “district attorneys in the State, who shall, upon being required to do so by the Attorney General, send bills of indictment and assist him in the performance of the duties of his office.” § 75-13. Any individual found to have violated section 75-1.1 is liable for a civil penalty of up to \$5000 for each violation, which goes to the Civil Penalty and Forfeiture Fund. § 75-15.2. Additionally, any person injured by a violation of this Chapter has a right of action and can obtain treble damages. § 75-16. The statute of limitations for these civil actions is four years. § 75-16.2.

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ND	N.D. CENT. CODE. §§ 28-01-16 ; 51-10-01 to 51-15-11	<p>The Attorney General has the power to bring suit on behalf of the state to prevent and restrain violations of the provisions of the Unlawful Sales or Advertising Practices chapter or other provisions of law. N.D. CENT. CODE. § 51-15-07 (2007). He can collect a civil penalty for each violation of up to \$5000. § 51-15-11. In addition, individuals are entitled to sue for damages and where the court finds the defendant knowingly committed the conduct, the court may order treble damages. § 51-15-09. Further, if the violation is of the Unfair Trade Practices Law (Chapter 51-10), the several State's Attorneys can institute a suit in addition to the Attorney General and harmed individuals. § 51-10-06. All moneys recovered by the Attorney General go to a treasury fund. § 54-12-18 (2008). The statute of limitations in North Dakota for these actions is six years. § 28-01-16.</p>
OH	OHIO REV. CODE ANN. §§ 1345.01 to 1345.13, 4165.01 to 4165.04	<p>Deceptive trade practices are listed in OHIO REV. CODE ANN. § 4165.02 (West, Westlaw through 2013 File 38 of the 130th Ga. Gen. Assembly). A person injured or likely to be injured by another who commits a deceptive trade practice may commence a civil action for injunctive relief and damages. § 4165.03. Unfair or deceptive acts or practices "in connection with a consumer transaction" are further defined in section 1345.02, and "unconscionable" acts or practices are defined in section 1345.03. The Attorney General may bring an action with respect to these unlawful practices for declaratory and injunctive relief. § 1345.07. The Attorney General can bring a class action on behalf of consumers as well. <i>Id.</i> Suppliers who engage in violative practices may be liable for up to \$25,000 in civil penalties. <i>Id.</i> The statute of limitations for civil actions brought by the Attorney General is two years. <i>Id.</i> One-fourth of civil penalties go to the treasurer of the county in which the action is brought, and three-fourths go to the consumer protection enforcement fund. <i>Id.</i> Consumers harmed by violative acts also have a cause of action, in which they can get injunctive relief, can rescind the transaction or can recover actual economic damages plus up to \$5000 in noneconomic damages. § 1345.09. In certain cases the consumer can recover three times the amount of actual economic damages or \$200, whichever is greater plus up to \$5000 in noneconomic damages. <i>Id.</i></p>



OK	OKLA. STAT. tit. 15, §§ 751-765, tit. 78, §§ 51-55	<p>The Oklahoma Consumer Protection Act defines unfair trade practices and deceptive trade practices at OKLA. STAT. tit. 15, §§ 752, 753 (1996 &amp; Supp. 2012). “The Attorney General or a district attorney may bring an action” for declaratory or injunctive relief and actual damages and penalties. tit. 15, § 756.1. Aggrieved consumers also have a private right of action for damages. tit. 15, § 761.1. If the violative act is also found to be unconscionable, the violator is also liable to the aggrieved customer for the payment of a civil penalty, recoverable in an individual action only, of up to \$2000 for each violation. <i>Id.</i> Any person found to be in violation of the Act in a civil action must pay a civil penalty of up to \$10,000 for each violation, in addition to any other penalties. <i>Id.</i> “Civil penalties or contempt penalties sued for and recovered by the Attorney General or a district attorney shall be used for the furtherance of their duties and activities under the Consumer Protection Act.” <i>Id.</i></p> <p>The Oklahoma Deceptive Trade Practices Act lists additional unlawful practices at tit. 78, § 53. “Any person damaged or likely to be damaged by a deceptive trade practice of another” may bring a civil action for injunctive relief and damages, although proof of actual monetary damages, loss of profits, or intent are not required for an injunction. OKLA. STAT. tit. 78, § 54 (2002 &amp; Supp. 2013). The Attorney General or a district attorney of the state is authorized to bring an action against one who misrepresents the geographic location of the supplier or lists a fictitious business name in a directory assistance database seeking an injunction or recovery of money unlawfully received from aggrieved customers (to be held in escrow for distribution to the aggrieved customers). <i>Id.</i> The statute of limitations in Oklahoma is five years for contracts in writing, three years for contracts not in writing, and two years for an action for relief on the ground of fraud. tit. 12, § 95.</p>
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OR	OR. REV. STAT. ANN. §§ 646.605 to 646.691	Oregon law defines unlawful practices at OR. REV. STAT. ANN. §§ 646.607, 646.608 (West 2003). A “prosecuting attorney who has probable cause to believe that a person is engaging in, has engaged in, or is about to engage in an unlawful trade practice may bring suit in the name of the State of Oregon in the appropriate court to restrain such person from engaging in the alleged unlawful trade practice.” § 646.632. Any person who suffers an ascertainable loss of money or property may also bring an individual action to recover actual damages or statutory damages of \$200, whichever is greater. § 646.638. The court or jury may also award punitive damages. <i>Id.</i> Actions must be brought within one year from the discovery of the unlawful method, act or practice, but “whenever any complaint is filed by a prosecuting attorney to prevent, restrain or punish violations of ORS 646.608, running of the statute of limitations with respect to every private right of action . . . based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof.” <i>Id.</i> The court may set a civil penalty of up to \$25,000 for each violation of an injunction issued under section 646.632, each violation of an assurance of voluntary compliance under section 646.632, and any willfully used method, act or practice declared unlawful by sections 646.607 or 646.608. § 646.642.
PA	73 PA. CON. STAT. ANN. § 201-1 to 201-9.3	The Unfair Trade Practice and Consumer Protection Law grants discretion to courts to provide damages to <i>any</i> “person in interest.” 73 PA. STAT. ANN. § 201-4.1 (West 2008). The Attorney General or “the appropriate District Attorney” may recover civil penalties (of up to \$5000 for each violation) and equitable relief. § 201-8. The Attorney General may “order the dissolution, suspension or forfeiture of the franchise or right to do business of any person, firm or corporation which violates the terms of an injunction issued under section 4 of this act.” § 201-9. The Act provides for private actions as well. § 201-9.2.

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RI	R.I. GEN. LAWS ANN. §§ 6-13.1-1 to 6-13.1-28	<p>Rhode Island law defines “[u]nfair methods of competition and unfair or deceptive acts or practices” at R.I. GEN. LAWS ANN. § 6-13.1-1 (West 2006 &amp; Supp. 2012), and declares that these practices “in the conduct of any trade or commerce” are unlawful in section 6-13.1-2. The Attorney General may bring an action on behalf of the state for injunctive relief. § 6-13.1-5. “Any person who purchases or leases goods or services primarily for personal, family, or household purposes and thereby suffers any ascertainable loss of money or property” as a result of an unlawful practice may also bring an action (or class action) to recover actual damages or \$200, whichever is greater. § 6-13.1-5.2. The court may award punitive damages. <i>Id.</i> “Any person who violates the terms of an injunction issued under section 6-13.1-5 is liable for a civil penalty of up to \$10,000 per violation. § 6-13.1-8. The statute of limitations generally for contracts in Rhode Island is twenty years. § 9-1-17.</p>
SC	S.C. CODE ANN. §§ 39-5-10 to 39-5-170	<p>South Carolina law declares that “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce” are unlawful. S.C. CODE ANN. § 39-5-20 (1976). The Attorney General has the power to bring suit to enforce the Act, and if a court finds that a person is willfully using an unlawful practice, he is liable for a civil penalty of up to \$5000 per violation. § 39-5-110. If a person violates the terms of an injunction, he shall pay to the State a civil penalty of up to \$15,000 per violation. <i>Id.</i> In addition:</p> <p style="padding-left: 40px;">It shall be the duty of the solicitors of each judicial circuit and all county and city attorneys to lend to the Attorney General such assistance as the Attorney General may request in the commencement and prosecution of actions pursuant to this article, or any solicitor or county or city attorney with prior approval of the Attorney General may institute and prosecute actions hereunder in the same manner as provided for the Attorney General; provided, however, that if an action is prosecuted by a solicitor or county or city attorney alone, he shall make a full report thereon to the Attorney General, including the final disposition of the matter.</p> <p>§ 39-5-130. Any aggrieved individual may also bring an action to recover actual damages, and if the court finds the violation to be willful the individual can recover treble damages. § 39-5-140. The statute of limitations for actions is three years. § 39-5-150.</p>

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SD	S.D. CODIFIED LAWS §§ 37- 24-1 to 37-24- 48	South Dakota defines certain deceptive acts or practices at S.D. CODIFIED LAWS § 37-24-6 (West, Westlaw through 2013 Reg. Sess.). The Attorney General can bring an action on behalf of the state for injunctive relief. § 37-24-23. In addition, “It shall be the duty of state’s attorneys to render to the attorney general such assistance as the attorney general may request in the commencement and prosecution by the attorney general of actions pursuant to this chapter. The state’s attorney with prior approval of the attorney general may institute and prosecute actions hereunder in the same manner as provided for the attorney general and shall make a full report thereon to the attorney general, including the final disposition of the matter.” § 37-24-24. The Attorney General can recover a civil penalty of up to \$5000 for each violation of an injunction issued. § 37-24-26. If the unlawful practice was intentionally used, the Attorney General can recover a civil penalty of up to \$2000 per violation. § 37-24-27. In addition, any aggrieved person can bring a civil action for the recovery of actual damages suffered. § 37-24-31. The statute of limitations for actions under this chapter is four years. § 37-24-33.
TN	TENN. CODE ANN. §§ 47- 18-101 to 47- 18-130	The Tennessee Consumer Protection Act lists many unlawful, unfair, or deceptive acts or practices at TENN. CODE ANN. § 47-18-104 (2010). The division of consumer affairs in the department of commerce and insurance (the “division”) has investigative powers, subject to the approval of the Attorney General. § 47-18-106. The Attorney General, at the request of the division, may bring an action in the name of the state for injunctive relief. § 47-18-108. The court may order payment to the state of a civil penalty of up to \$1000 per violation. <i>Id.</i> In addition, any knowing violation of the terms of an injunction or order is punishable by a civil penalty of up to \$2000 per violation. <i>Id.</i> Any aggrieved individual may also bring an action to recover actual damages, and if the court determines the unlawful practice was willful it may award treble damages. § 47-18-109. Individuals must bring actions within one year from their discovery of the unlawful act or practice and not more than five years after the date of the consumer transaction giving rise to the claim for relief. § 47-18-110. Anyone who knowingly uses a method or practice which targets elderly persons and is in violation of this Act is liable to the state for a civil penalty of up to \$10,000 for each violation. § 47-18-125.

TX	TEX. BUS. & COM. CODE ANN. §§ 17.41 to 17.63	<p>Texas's Deceptive Trade Practices-Consumer Protection Act lists unlawful deceptive trade practices at TEX. BUS. &amp; COM. CODE ANN. § 17.46 (West 2011 &amp; Supp. 2012). The consumer protection division has authority to bring an enforcement action for injunctive relief. § 17.47. In addition, the consumer protection division may request a civil penalty paid to the state in an amount of up to \$20,000 per violation and an additional penalty of up to \$250,000 if the practice was calculated toward a consumer sixty-five years of age or older. <i>Id.</i> Any person who violates the terms of an injunction shall pay a civil penalty of not more than \$10,000 per violation, not to exceed \$50,000. <i>Id.</i> District and county attorneys have a duty of assistance to the consumer protection division, and they can institute and prosecute actions seeking injunctive relief with prior written notice to the consumer protection division. § 17.48. Individual consumers may also maintain actions in certain circumstances for economic damages and injunctive relief. § 17.50. If the trier of fact finds that the defendant's conduct was committed knowingly, the consumer may also recover damages for mental anguish, not to exceed three times the amount of economic damages. <i>Id.</i> Consumers can also file class actions. § 17.501. Under certain conditions, consumers may waive the provisions of this Act, but such a waiver cannot be a defense to an action brought by the Attorney General. § 17.42. All actions must be brought within two years of the date on which the false, misleading, or deceptive act or practice occurred or within two years after the consumer should have discovered the occurrence. § 17.565.</p>
UT	UTAH CODE ANN. §§ 13-11-1 to 13-11-23	<p>The Utah Consumer Sales Practices Act lists certain knowing and intentional acts as deceptive acts or practices at UTAH CODE ANN. § 13-11-4 (LexisNexis 2009 &amp; Supp. 2013). The code declares that such acts or practices by a supplier in connection with a consumer transaction violate the Act. § 13-11-5. The Division of Consumer Protection has enforcement authority under the Act. § 13-11-7. The Division of Consumer Protection can bring an action for declaratory or injunctive relief or actual damages on behalf of consumers who complained to it. § 13-11-17. It can also bring a class action on behalf of consumers for actual damages. <i>Id.</i> The court may impose a civil penalty of up to \$5000 for each day an injunction is violated, and all civil penalties are paid to the General Fund. § 13-11-7. Individual consumers may also bring actions to obtain declaratory or injunctive relief or actual damages (or \$2000, whichever is greater). § 13-11-19. Consumers can also bring class actions. § 13-11-20. The statute of limitations for actions is two years. §§ 13-11-17, 13-11-19.</p>

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VT	VT. STAT. ANN. tit. 9, §§ 2451-2466A	<p>Vermont law declares unlawful all “[u]nfair methods of competition in commerce, and unfair or deceptive acts or practice in commerce.” VT. STAT. ANN. tit. 9, § 2453(a) (2006 &amp; Supp. 2012). “No actual damage to any person need be alleged or proven for an action to lie under this chapter.” tit. 9, § 2457. The Attorney General or a state’s attorney, if authorized to proceed by the Attorney General, may bring an action in the name of the state for injunctive relief, a civil penalty of up to \$10,000 per violation, and an order of restitution on behalf of a consumer or a class of consumers similarly situated. tit. 9, § 2458(b)(1). However, “[a]ny state’s attorney receiving notice of any alleged violation of this chapter shall immediately forward written notice of the same with any other information he may have to the ‘office of the attorney general, attention consumer protection division.’” tit. 9, § 2462. Any person who violates the terms of an injunction issued shall pay the state a civil penalty of up to \$10,000 per violation. tit. 9, § 2461(a). Any aggrieved consumer may also initiate an action for injunctive relief or damages. <i>Id.</i> The statute of limitations for civil actions in Vermont is six years. tit. 12, § 511.</p>
VA	VA. CODE ANN. §§ 59.1- 196 to 59.1- 207	<p>The Virginia Consumer Protection Act declares unlawful certain fraudulent acts or practices committed by a supplier in connection with a consumer transaction at VA. CODE ANN. §§ 59.1-200(A), 59.1-200.1(A) (2006 &amp; Supp. 2013). The Attorney General, attorney for the Commonwealth, and the attorney for a county, city, or town have investigative powers. §§ 59.1-201(A), 59.1-201.1. These parties may also initiate civil proceedings for injunctive relief without needing to prove damages. § 59.1-203(A). In addition, if the court finds the defendant willfully engaged in an unlawful act, the court may impose a civil penalty of up to \$2500 per violation. § 59.1-206(A). Any aggrieved person may also initiate an action to recover actual damages or \$500, whichever is greater and, if the violation was willful, the trier of fact may increase damages to an amount up to three times the actual damages or \$1000, whichever is greater. § 59.1-204(A). The statute of limitations for individual actions is two years, but when any government agency files suit, the time during which such governmental suit and all appeals therefrom is pending shall not count as any part of the period within which an action shall be brought. § 59.1-204.1(A)-(B).</p>

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WA	WASH. REV. CODE §§ 19.86.01-19.86.920	Washington's Consumer Protection Act declares unlawful "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." WASH. REV. CODE § 19.86.020 (West 2013). The Attorney General may bring an action in the name of the state, or as <i>parens patriae</i> on behalf of persons residing in the state, for injunctive relief. § 19.86.080(1). Any injured person may also bring a civil action for actual damages, and the court may, in its discretion, increase the award of damages to up to three times the actual damages sustained by not to exceed \$25,000. § 19.86.090. Any person who violates the terms of any injunction issued shall by a civil penalty of up to \$25,000. § 19.86.140. Civil penalties also apply to violations of §§ 19.86.020, 19.86.030, and 19.86.040 in the amounts of \$2000, \$100,000, and \$100,000, respectively, and the penalties are higher for corporations. <i>Id.</i> The statute of limitations for damages actions is four years, but the running of the statute of limitations shall be suspended during the pendency of any action brought by the Attorney General. § 19.86.120.
WV	W. VA. CODE ANN. §§ 46A-6-101 to 46A-6-110, 46A-7-101 to 46A-7-115	West Virginia law defines certain unfair methods of competition and unfair or deceptive acts or practices. W. VA. CODE § 46A-6-102 (LexisNexis 2007). Any person who suffers an ascertainable loss of money or property as a result of the use of one of these practices may bring a civil action to recover actual damages or \$200, whichever is greater, or an injunction, only after informing the seller or lessor in writing of the alleged violation and providing the seller or lessor twenty days to make a cure offer. § 46A-6-106. In addition, the Attorney General, after notice and hearing, may order a creditor or other person to cease and desist from engaging in violations. § 46A-7-106. Respondents aggrieved by an order of the Attorney General may obtain judicial review. <i>Id.</i> The Attorney General may also bring a civil action for injunctive relief. § 46A-7-108. If the court finds that the defendant "has engaged in a course of repeated and willful violations of this chapter," it may assess a civil penalty of up to \$5000 for each violation. § 46A-7-111. The statute of limitations for actions is four years. <i>Id.</i>

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WI	WIS. STAT. ANN. § 100.18	Wisconsin law defines certain practices as unlawful and deceptive at WIS. STAT. ANN. § 100.18 (West 2010). Any person suffering pecuniary loss because of a violation of this section may sue to recover such monetary loss. § 100.18(11)(b)(2). The statute of limitations for such actions is three years after the occurrence of the unlawful act. § 100.18(3). The Department of Agriculture, Trade and Consumer Protection (the "Department") or the Department of Justice, after consulting with the Department, or any district attorney, upon informing the Department, may commence an action in the name of the state for injunctive relief. § 100.18(11)(a).
WY	WYO. STAT. ANN. §§ 40-12-101 to 40-12-114	The Wyoming Consumer Protection Act prohibits unfair and deceptive acts and practices in consumer transactions. It is enforced by the Attorney General's Office (specifically, the Consumer Protection Unit), which can seek civil penalties, injunctions, and legal fees for violations. Civil Penalties are capped at \$10,000 per violation of provisions of the act and \$5000 per violation of injunctions. WYO. STAT. ANN. § 40-12-113(a)-(c) (2013). These fees may be waived if the violator has provided restitution or reimbursement to injured parties. Jail time is also a possible punishment for certain violations. Depending on the violation, the statute of limitations for the actions brought under the Wyoming Consumer Protection Act range from one to two years after discovery of the unlawful practice. § 40-12-109. Private parties can also seek damages for injuries suffered as a result of violations of the Act. § 40-12-108(a). The Attorney General appears to be the sole enforcing authority and there is no mention of the abilities of municipalities to enforce the act. Additionally, there is a separate section specifying that remedies provided in the act are the exclusive remedies for actions brought under it. § 40-12-114. Overall, the illegal practices are fairly broadly defined. There is a long list of examples of specific violations, but the act also includes the catchall phrase "engages in unfair or deceptive acts or practices." § 40-12-105(a).