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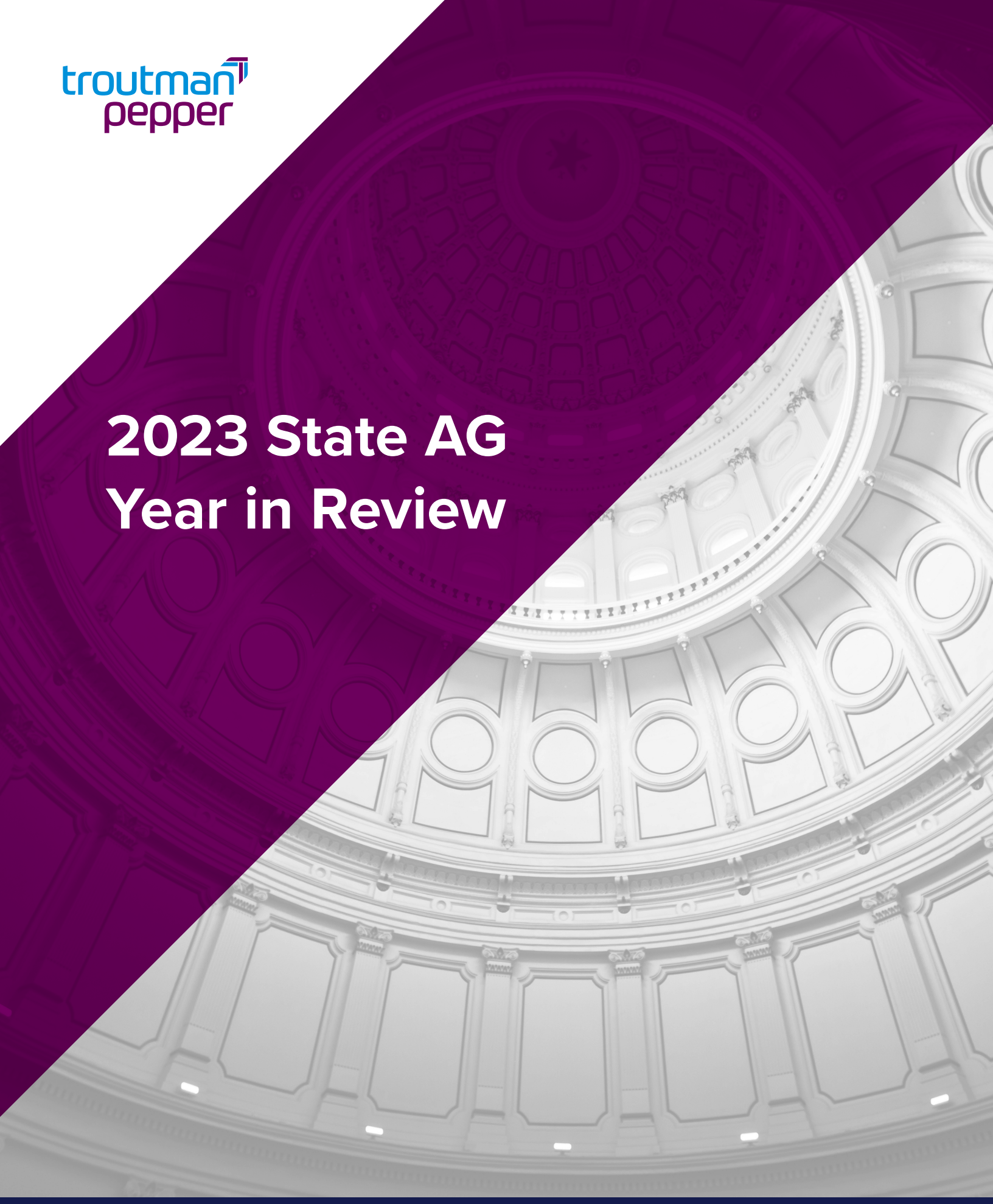
2023 State AG Year in Review



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INTRODUCTION

State attorneys general (AGs) continue their role as innovators shaping the regulatory environment by utilizing their expertise and resources to influence policy and practice. The public facing nature of the office held by AGs across the U.S. compels responses to constituent concerns on abbreviated timetables. This political sensitivity coupled with the AGs' ability to bring the full power of the sovereign to address local and national issues alike demonstrates why the AGs may be the most formidable authority in the current regulatory environment.

Our 2023 State AG Year in Review offers an overview of the evolving nature of the regulatory landscape by highlighting pivotal events and trends that defined the year. While we do not have a crystal ball, understanding the AGs' priorities by reviewing their actions over the past 12 months provides a reliable barometer of future regulatory direction. Rapid changes from year to year underscore the importance for businesses of staying informed and adapting to regulatory shifts to effectively manage compliance and mitigate regulatory risk.

While state AGs play a vanguard role across all areas of consumer protection, the Year in Review highlights the state AGs' emphasis on several sectors, topics, and industries, including: (1) artificial intelligence (AI); (2) consumer financial services; (3) pharmaceuticals/health sciences; (4) marketing and advertising; (5) privacy; (6) environmental, social, and corporate governance (ESG); and (7) solar energy.

With 2023 marking its 20th anniversary, our State Attorney General practice is a valued partner to clients seeking assistance with state AG enforcement, litigation, and compliance matters. As the only law firm with two attorneys ranked Band 1 in Chambers USA and only one of five ranked nationwide, our team is committed to helping companies navigate the present challenges while also preparing to meet future obligations so they can focus more on building their business than worrying about regulators. We trust that this 2023 Year in Review will serve as a valuable tool in these endeavors.

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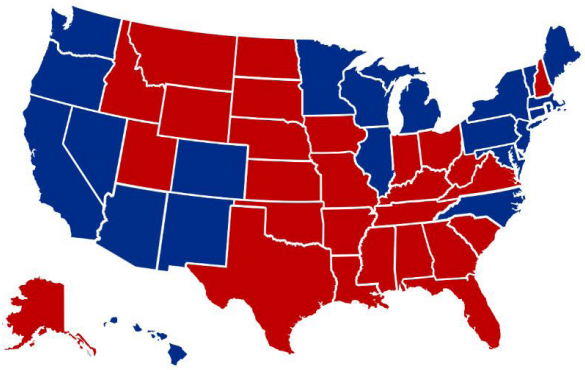
A LOOK BACK AT THE 2023 STATE AG ELECTIONS AND A LOOK AHEAD TO 2024

Before the 2023 elections, Republicans held 27 AG offices nationwide, with Democrats holding 24, including the District of Columbia.



Democratic States

Republican States

- 27 Republican Held States
- 24 Democratic Held States, including the District of Columbia

In the 2023 state AG elections held in Kentucky, Louisiana, and Mississippi, Republicans successfully remained in office. Russell Coleman secured victory in Kentucky, while former Louisiana Solicitor General Liz Murrill emerged as the winner in Louisiana. The only incumbent seeking re-election, Lynn Fitch, also won. The outcomes of these contests sustained a Republican majority of AGs, influencing the overall balance of power among state AGs across the U.S.

Looking ahead to 2024, 10 AGs are up for election due to current AGs pursuing other offices or not seeking re-election, with notable open seats in North Carolina, Oregon, Pennsylvania, Utah, Washington, and West Virginia. As a result, at least six new AGs will come to power. Indiana, Missouri, Montana, and Vermont will also hold their AG elections in 2024, but in those instances the incumbent will be running against a challenger. In any event, 2024 will involve new personalities as well as regulatory and political priorities across a substantial number of jurisdictions.

In terms of leadership for the primary national AG organizations, the following AGs will be guiding priorities in 2024:

NAAG (National Association of Attorneys General):

- President: Attorney General Ellen Rosenblum, Oregon
- President-Elect: Attorney General John Formella, New Hampshire
- Vice President: Attorney General William Tong, Connecticut
- Vice President-Elect: Attorney General Marty Jackley, South Dakota

AGA (Attorney General Alliance):

- Chairman: Attorney General Aaron Ford, Nevada
- 2025 Chairman: Attorney General Treg Taylor, Alaska

DAGA (Democratic Attorneys General Association):

- Co-Chairman: Attorney General Aaron Ford, Nevada
- Co-Chairman: Attorney General Kathy Jennings, Delaware

RAGA (Republican Attorneys General Association):

- Chairman: Attorney General Sean Reyes, Utah
- Vice Chairman: Attorney General Austin Knudsen, Montana

ARTIFICIAL INTELLIGENCE

In 2023, state AGs turned their collective attention to AI. While AI has been emerging from the background as a target for regulatory interest for years, the development, democratization, and enthusiasm around generative AI in November 2022 brought public awareness and interest into the technology's many potential uses. This shift also raised concern for a world where computers make complex decisions that impact human lives.

Historically, state AGs have been at the forefront of regulating emerging technology. Their expertise with enforcing existing laws to shape the regulatory environment, their resources when banded together as a multistate entity, and their agility in responding to novel issues at a local level make them the vanguard regulatory body when it comes to regulating AI technology. As the AGs head into 2024, they are expected to amplify their advocacy for the safe use and comprehensive regulation of AI technology in furtherance of consumer protection.

The Foundation of Modern AI Regulation

The state AGs' recent push for regulatory oversight of AI technology is rooted in both legislative initiatives and enforcement activity over the past several years — essentially the building blocks for a more robust regulatory regime. State AGs worked closely with state congressional bodies to pioneer early AI regulation through targeted legislation aimed at specific uses. By way of example, the Illinois Artificial Intelligence Video Interview Act imposes notification and human-review requirements on employers that decide to use AI to review job applicant video interviews. Similarly, Colorado's S.B. 22-113, signed into law in June 2022, requires the state's use of facial recognition service to undergo auditing that ultimately requires the state to take reasonable steps to promote fairness in decision making. On the enforcement front, the Vermont AG used the Vermont Consumer Protection Act and its Data Broker Law in 2022 to target a company that employed AI to map Vermont citizens' faces. Similarly, in March 2022, California AG Rob Bonta sent a letter to 30 hospitals regarding the use of AI in health care. These small steps paved the way for increased regulatory attention to AI applications in 2023.

AI Regulation Through Enforcement

In 2023, state AGs brought their concerns about the use of AI technology to the forefront of regulatory discourse. In March, NAAG's *Attorney General Symposium and Presidential Summit* featured a panel on regulating AI technology. Colorado Chief Deputy AG Natalie Hanlon Leh outlined how AI impacts peoples' everyday lives and futures, and underscored the ways AI permeates industries like financial services, criminal justice, human resources, health care, and social media. Leh also stressed the need for ongoing ethical and regulatory review to tackle embedded biases and establish built-in safeguards against unforeseen harms.

In addition to closely monitoring the AI space, state AGs started to increase the frequency and sophistication of enforcement actions against entities that deploy AI technologies. While it is impossible to know the number of enforcement actions due to the confidential nature of a law enforcement investigation, limited public comments from AGs at the forefront of AI regulations have provided insights into the current enforcement landscape. For instance, in January, New York AG Letitia James sought information from Madison Square Garden regarding the company's use of AI coupled with facial recognition technology to prevent attorneys who were representing clients engaged in any litigation *against* Madison Square Garden from entering the venue. James alleged that this conduct

potentially violated New York's biometric identifier law and could also impact a client's ability to seek representation of their choosing.

The California AG previously sent letters to hospital CEOs across the state requesting information about how health care facilities and other providers are identifying and addressing racial and ethnic disparities in commercial decision-making tools. The letters stem from the fear that historic racial biases may find their way into data and AI algorithms used to streamline the medical system, because, as the AG put it, "without appropriate review, training, and guidelines for usage, algorithms can have unintended negative consequences, especially for vulnerable patient groups."

AI Regulation Through Influence

State AGs have experienced a surge of influence over the past decade owing to the effectiveness of local enforcement, experience, and influence gained through complex multistate investigations, and a political environment that promotes activism by elected law enforcement officials. State AGs have wielded this increased influence to amplify calls for more effective AI regulation. For example, in June, a bipartisan group of 23 AGs wrote a letter to the chief counsel for the National Telecommunications and Information Administration (NTIA) emphasizing the importance of a risk-based approach to AI regulation that recognizes certain use cases are less risky than others and scrutinizes riskier use cases more heavily.

Specifically, the AGs endorsed independent standards for transparency, including (1) testing, (2) assessments, and (3) audits of AI solutions. Similar to the Energy Star program, NTIA or the National Institute of Standards and Technology (or a partnership between the two) would establish independent standards, so trusted auditors could certify an AI system and build public trust. For high-risk AI solutions, the AGs proposed mandatory external third-party audits that would occur periodically.

In the letter, state AGs also underscored the need for consumer transparency when AI is deployed in a manner that would impact individuals, the importance of reliable testing and assessment requirements, and the need for the requisite post-incident enforcement capabilities in the event of a security incident. State AGs called for the creation of consistent criteria and technical standards for evaluating AI systems through third-party auditors or certifications (much like the Energy Star program, which verifies the energy efficiency rating of consumer products — but for AI applications).

The AGs are also focusing on the potential criminal uses of AI. In perhaps the most urgent call for regulation to date, every U.S. jurisdiction, comprising 54 AGs from every state, district, and territory, unanimously urged Congress to address bad actors who generate child sexual abuse material using AI. The AGs concluded by asking Congress to establish an expert commission to operate on an ongoing basis and, more importantly, to act on any recommendations proposed by the commission to ensure that prosecutors have adequate tools to prosecute violators.

State AGs also advocated for concurrent enforcement authority in any federal regulatory regime that will ultimately govern AI technology, reasoning that state AGs can enable more effective enforcement to redress harms by leveraging their role as the leaders in consumer protection.

Looking Ahead to AI Regulation in 2024

This October, President Biden issued a forward-looking executive order aimed at shaping a federal policy around the growing use of AI technology across public and private sectors. As expected, the influence of state AGs is reflected in the executive order, which focuses on: (1) the development of standards, tools, and tests to ensure safe and secure AI systems; (2) bipartisan data privacy legislation with respect to the use of data in AI applications; (3) a greater understanding and regulation of AI-induced discrimination; (4) consumer, patient, and student protections; and (5) the development of principles and best practices to minimize harms to the workforce resulting from the increasing use of AI in making decisions that impact human lives.

As AI regulation proliferates and the public adoption of AI technologies increases, AI will fall under heavier scrutiny, especially in critical sectors like health care, finance, and national security. Companies must be cautious and proceed with all due contemplation when deploying an AI solution — especially those that directly impact consumers.

One thing is clear: legislation, regulation, enforcement action, and influence will continue to shape the regulatory landscape well into 2024 and beyond. The world is likely to experience a seismic shift in technology that will present opportunities that have not even been conceived while also causing problems that we cannot yet fathom. Regulators will have to walk a tight line between promoting inventive progress and honoring the traditions of consumer protection.

CONSUMER FINANCIAL SERVICES

In 2023, state AGs remained diligent at enforcing their laws to protect consumers in the financial services industry. AGs focus on financial services products to protect consumers from hidden charges and the overall cost incurred by consumers when purchasing products and services. Indeed, as industry becomes more inventive, so do the state AGs. For example, the AGs have continued to take aim at hidden (or junk) fees by seeking greater transparency of the total cost to consumers. The AGs have also remained focused on tackling usurious interest charged to borrowers, price gouging, and money-making schemes. Sometimes AGs move from enforcement to unpredictable litigation to protect their constituents. Regardless, the AGs will remain focused on the consumer financial services space in 2024.

Washington AG Ordered to Pay $4.3M in Attorney's Fees and Costs to Thrift Store Chain

In October, Savers Value Village, Inc., prevailed in litigation filed by the Washington AG under the Washington Consumer Protection Act. The Washington AG had alleged that Savers misrepresented itself as a charity and misled consumers into believing their purchases directly supported various charities. After nearly a decade of litigation, which included appeals to the Washington Court of Appeals and the Washington Supreme Court, the Washington AG's office was ultimately ordered to pay nearly $4.3 million in attorney's fees and costs. Though state AGs continue to leverage consumer protection statutes seeking large settlements from businesses, cases like this one serve as a healthy reminder to state AGs about the risk of pursuing claims unsupported by law.

District of Columbia AG Resolved Alleged Usury and Deceptive Acts Violations With Community Lending Platform

In May, the District of Columbia AG entered a settlement with SoLo Funds, resolving claims that the company's lending practices violated the District of Columbia usury law and Consumer Protection Procedures Act. SoLo Funds provides a platform that connects consumer lenders and borrowers. The District of Columbia AG alleged that the company's website advertised interest-free and flexible loans while also soliciting an "appreciation tip" for lenders. In addition, lenders were allegedly required to pay SoLo a "platform tip," regardless of whether the loan was ever repaid. The allegations focused on failure to disclose that most loans were never repaid and that the company facilitated loans with APRs that violated District of Columbia usury law. The settlement included monetary relief for $30,000, as well as injunctive terms regarding clear disclosure to borrowers and lenders that use the platform. As companies like SoLo develop innovative products and platforms, they should be aware of the state AG's focus on consumer protection laws and associated regulatory risk.

District of Columbia AG Issued Guidance on Restaurant Fee Disclosures

In March and August, the District of Columbia AG issued business advisories regarding the obligation of restaurants to properly disclose service fees and charges to diners. The District of Columbia AG clarified that under the District of Columbia Consumer Protection Procedures Act (CPPA), restaurants must provide clear disclosures about order fees and surcharges before the consumer places an order. Furthermore, the District of Columbia AG explained that restaurants must provide clear disclosures about whether fees will be distributed to employees in the form of tips or used to pay base wages. Because multiple advisories have now been published, businesses should follow the principles set forth in each. Food delivery services should also take note of these developments and ensure compliance to avoid potential CPPA violations.

Connecticut AG Led Bipartisan Coalition for Federal-State Partnerships Against Consumer Fraud

In August, a bipartisan group of state AGs from Connecticut, Illinois, New Hampshire, and Tennessee jointly authored a letter to the Federal Trade Commission (FTC) urging improved collaboration with state AGs. Twenty-six additional AGs signed the letter. The letter highlighted how the FTC and state AGs can both benefit by working together to enforce consumer protection laws, highlighting a trend toward greater federal-state coordination in this arena.

New York AG Announced Settlement With Avis Budget Group

In August, the New York AG announced a settlement with Avis Budget Group, resolving allegations that the company denied car rentals to customers without a credit card in violation of New York General Business Law. Under the terms of the settlement, Avis Budget will pay $275,000 in civil penalties and update its relevant employee training. New York launched its investigation after receiving a consumer complaint, emphasizing the importance of collecting and monitoring consumer complaint data to avoid costly settlements.

Senators Urged State AGs to Protect Consumers From Cash Homebuying Companies

In June, a report from the Consumer Financial Protection Bureau (CFPB) outlined concerns about predatory house-flipping practices. This report prompted Congress to send a letter to the NAAG requesting state AGs' partnership in preventing companies like HomeVestors from targeting and deceiving vulnerable populations into selling their homes at prices far below market value. More broadly, regulators at the state and federal level alike continue to scrutinize the real estate industry.

Utah AG Lauded State's Largest Consumer Protection Settlement

In May, Utah AG Sean Reyes announced a consumer settlement with Response Marketing Group LLC and its principals for $15 million and a lifetime ban against selling money-making products and training services nationwide. The settlement — the largest ever for the Utah AG's consumer protection division — concluded a case brought by the FTC and the Utah AG's office (representing the Utah Department of Commerce – Division of Consumer Protection) alleging violations of the FTC Act, the Telemarketing Sales Rule, and several Utah statutes. Two Response Marketing celebrity endorsers also agreed to pay a total of $1.7 million in redress.

Arizona AG Settled With Restaurants Over Undisclosed Add-on Fees

In April, Arizona AG Kris Mayes announced a settlement with two Phoenix-area restaurants — Etta Scottsdale LLC and Maple & Ash Scottsdale LLC — over undisclosed add-on charges. Mayes claimed that the restaurants charged a 3.5% "employee benefits charge" to walk-in customers not disclosed on either restaurant's menu, which allegedly violated the Arizona Consumer Fraud Act. This settlement underlines regulators', including the FTC and state AGs, continued scrutiny of undisclosed hidden or "junk" fees across a range of industries.

New York AG Proposed Rules to Strengthen Price Gouging Law

In March, New York AG Letitia James proposed the first-ever rules to strengthen enforcement of the state's price gouging law, which prohibits companies from exploiting market disruptions to increase their profits on essential goods and services. In response to the influx of pandemic-related price gouging complaints, the 2020 amended law gives the AG rulemaking authority, among other changes. The proposed rules aim to protect consumers by establishing "clear guardrails against price increases during emergencies," making it easier for the AG to investigate and combat perceived price gouging.

Attorneys and Law Firm Plead No Contest in Michigan Collections Fraud Case

In March, Fishman Group PC President Marc Fishman pled no contest on behalf of the firm to stealing client assets by filing false proofs of service in collections cases. Previously, Michigan AG Dana Nessel charged the Michigan collections law firm and its attorneys with one count of maintaining a criminal enterprise. Per the court order, the Fishman Group must pay nearly $150,000 in full restitution to all improperly garnished debtors.

Texas AG Alleged Title Protection Company Potentially Deceived Consumers

In January, AG Ken Paxton announced an investigation of California-based title security company Home Title Lock for potential violations of the Texas Deceptive Trade Practices Act. In its civil investigative demand (CID), the AG alleged the company may have misled consumers by making deceptive statements regarding its "home title monitoring and/or home title resolution services." The Texas AG based his investigation on company statements Home Title Lock made on its website and in television advertisements. In his CID, the Texas AG requested information substantiating the company's claims that (1) it provides "nationwide services," (2) its title fraud losses totaled more than "$5 billion in 2015," and (3) "Title and Mortgage Fraud [sic] is the fastest-growing white collar crimes in America," among others.

PHARMACEUTICALS + HEALTH SCIENCES

State AGs continue to focus the considerable authority vested in them under state consumer protection acts to affect business entities at all levels of the health care and life sciences industries. In 2023, state AGs took steps to expand their authority to investigate and litigate against the health care sector through (1) asserting an expansive view of common law authority to pursue public nuisance claims; (2) emphasizing and seeking to expand their existing antitrust authority; (3) continuing to take actions under traditional consumer protection authority; and (4) passing discrete laws that further expanded state AGs' authority to regulate the health care sector.

Public Nuisance Theory Remains an Open Question

Over the past half decade, state AGs, in coordination with the plaintiffs' bar, have filed litigation against all levels of the opioid supply chain — from manufacturers, distributors, and pharmacies to individual pharmacists — and against consulting firms alleged to have advised companies to maximize opioid sales. This litigation has tested the bounds of the authority vested in state AGs as well as counties, municipalities, and other political subdivisions to enforce common law claims that a public nuisance was caused by a company's activities. In an appeal from the Opioid Multi District Litigation (MDL), in September 2023, the Sixth Circuit Court of Appeals took the uncommon step of *sua sponte* certifying the question of whether Ohio law allows such public nuisance claims. The issue remains before the Ohio Supreme Court. State AGs' public nuisance authority has been tested in other states with various results, including the Oklahoma Supreme Court rejecting the Oklahoma AG's authority to pursue his public nuisance theories in the pharmaceutical space.

To date, settlements have exceeded $50 billion (in addition to billions of dollars in fees for private attorneys deputized to represent government entities). In 2024, the question of whether state AGs and localities may pursue public nuisance claims will continue to impact how state government actors pursue enforcement actions that do not perfectly square with their statutory authority.

Antitrust Scrutiny

Pharmaceutical Pricing

Recently, state AGs have also begun evaluating whether (and how) their regulatory authority can impact the price of health care and prescription drugs. In August 2023, state AGs and their Consumer Protection Division staff met at an antitrust boot camp sponsored by NAAG. The antitrust boot camp included nine panels including topics such as explaining the state AGs' statutory authority under Section 2 of the Sherman Act and the Clayton Act, and involved discussions about how state AGs could better coordinate with federal regulators to pursue antitrust claims. One focus involved how state AGs could scrutinize health care. In a panel titled "Healthcare and Antitrust," state AG staffers and staffers from the Department of Justice (DOJ)and the FTC emphasized concerns about pricing throughout the health care industry, the hurdles posed by rampant consolidation trends, and the alleged expanding clout of private equity in shaping the health care sector's future.

In addition to confidential investigations that we are aware of, state AGs filed enforcement actions and reached settlements with multiple pharmaceutical manufacturers, hospitals, and pharmacy benefit managers in 2023. Further, while antitrust enforcement actions have typically been led by federal regulators and joined by state AGs, we increasingly see multiple state AG offices expand their reach by recruiting and deputizing private antitrust attorneys to pursue such actions.

Illinois Expands Its Health Care Transaction Oversight

Exemplifying the expansion of state AG health care regulatory authority through legislation, on August 11, Illinois passed a law that authorizes the Illinois AG's office to review and assess certain "covered transactions" involving health care facilities and/or providers. The law requires health care facilities and provider organizations to provide 30 days' notice to the Illinois AG prior to engaging in any merger, acquisition, or contracting affiliation between two or more health care facilities or provider organizations not previously under common ownership or contracting affiliation (covered transactions). The law similarly requires notice to the Illinois AG for change of ownership of a health care facility. Under the law, the Illinois AG has broad authority to request additional information, as it deems necessary, within 30 days of receiving notice of the covered transaction. If the AG requests such additional information, the transaction may not proceed until 30 days after the parties have substantially complied with the requests. With the passage of this law, Illinois joins California, Connecticut, Massachusetts, New York, and others in crafting a dedicated health care transaction review process.

State AGs May Choose Their Forum of Choice for Antitrust Litigations

In June, the Judicial Panel on Multidistrict Litigation (JPML) ruled that the State Antitrust Enforcement Act of 2021 applies retrospectively to pending state antitrust enforcement actions, including to actions the JPML previously centralized. In light of that finding, the JPML ordered that a pending 16-state multistate AG antitrust litigation — that was previously consolidated in an MDL — should be remanded to federal court in Texas.

It remains to be seen how state AGs will utilize this ruling in other matters (for which the JPML's ruling remains subject to debate), including active antitrust litigations brought by state AGs that are presently consolidated within an MDL. If state AGs attempt to sidestep the MDL process, this creates the potential for the state AGs' litigation to advance at a different pace than the MDL and creates the risk of duplicative discovery and inconsistent pretrial rulings.

Targeting Alleged Traditional Unfair and Deceptive Practices

While antitrust enforcement was a key focus for state AGs in 2023, the vast majority of state AG investigations and litigations are grounded in each state AG's statutory mandate to stop "unfair or deceptive practices" in trade or commerce under their respective state consumer protection statutes — even though what constitutes an "unfair" or "deceptive" practice is often left undefined in such laws. These laws carry significant monetary exposure, including civil penalties (up to $50,000 per violation) as well as required restitution and disgorgement, in addition to injunctive relief.

While state AGs have reached settlements with many sectors of the health care industry under their so-called Unfair or Deceptive Acts or Practices (UDAP) laws, one example comes to mind involving the Georgia AG suing a medical treatment company and its owners for advertising and offering regenerative medicine products for sale to Georgia consumers to treat, cure, and mitigate various diseases and health conditions. Specifically, Georgia asserted that the company represented that its products were safe and effective, despite citing inadequate scientific studies, among other issues. This year, the company agreed to a consent judgment to resolve the state's lawsuit and agreed to no longer market or sell regenerative medicine products absent U.S. Food and Drug Administration (FDA) approval/clearance, and will not advertise without a reliable scientific basis.

Racial Inequity in Health Care

There has been an increasing trend, especially by Democratic state AGs, to assert that businesses are engaging in unfair or deceptive acts relating to racial inequities that are alleged to result from a company's products or actions. While such concerns of racial bias traditionally have been applied to the availability of housing or consumer credit (and relatedly, whether computer algorithms insert racial biases into decision-making processes), state AGs have recently begun to focus on medical equipment, drug efficacy, and even health care provider training as potential causes of disparate treatment based upon race in violation of state UDAP laws.

In November, 25 state AGs issued a letter to the FDA, requesting that labels on blood-oxygen-level readers warn of their "life-threatening" inaccuracies for people of color due to bias in their readings. According to the letter, certain pulse oximeters have been shown to misread the pulse and oxygen saturation levels for people with darker skin.

The California AG also sent letters to hospital CEOs across the state requesting information about how health care facilities and other providers are identifying and addressing racial and ethnic disparities in commercial decision-making tools. The letters assert a concern that historic racial biases may find their way into data and algorithms used to streamline the medical system, because, as the California AG put it, "without appropriate review, training, and guidelines for usage, algorithms can have unintended negative consequences, especially for vulnerable patient groups."

Legislation Expanding States' Authority

Notwithstanding the considerable powers that state AGs already possess in the health care space, some states have enacted legislation to further expand their oversight authority, enabling the AGs to directly regulate and monitor health care providers, insurance companies, and pharmaceutical companies. This increased authority is aimed at ensuring compliance with health care laws, protecting consumer rights, and promoting transparency and accountability within the industry. They will, however, potentially be accompanied by substantial economic burdens.

For instance, in February, Colorado AG Phil Weiser was a proponent of a Colorado law that was passed to reduce medical debt for Colorado residents and make health care more affordable and accessible, protecting Coloradans from "high interest rates for medical debt and confusing debt collection practices that lead to long-lasting debt and financial instability."

MARKETING + ADVERTISING

Historically, regulators have always been committed to ensuring transparency between companies and their customers. In 2023, this commitment was marked by an increase in state AGs coordinating with federal regulators to police marketing efforts.

Truthful Advertising

State AGs consistently focused their efforts on regulating deceptive advertising practices. This is evident by the multiple actions taken by state AGs spanning various industries. From biotech companies to lenders, state AGs have made it clear that no matter the size or magnitude of a company's deception, they will take action. For example, 50 states and the District of Columbia reached a $141 million multistate settlement with Inuit Inc., owner of TurboTax, for allegedly deceiving consumers into paying for tax services that were advertised as free. Additionally, Maryland AG Brian Frosh announced a $250,000 settlement with Caliber Homes, Inc., for allegedly misleading consumers by sending mailings that appeared to be from their current mortgage companies. California AG Rob Bonta settled with Biora, a genetic testing company, over misleading statements regarding the cost of its services. These actions underscore the need for businesses to implement marketing strategies that are fully transparent.

Additionally, 2023 revealed the growing trend of federal regulators and state AGs cooperating in regulating marketing practices. Specifically, in June, the FTC announced a request for information to optimize joint enforcement with state AGs to protect consumers from fraud. In response, a bipartisan coalition of 30 AGs submitted a comment letter emphasizing the importance of federal-state partnership in protecting consumers. Similarly, 26 state AGs issued a letter supporting the FTC's proposed rule amending the Negative Option Rule. The rule aimed to set clear enforcement requirements for all negative-option practices nationwide.

These developments could lead to more joint enforcement actions between federal and state regulators. Not only could this cooperation increase the likelihood of enforcement action, but it could also increase the magnitude of enforcement activity against industry actors. Companies will need to ensure their marketing is truthful in order to avoid regulatory scrutiny.

Online Reviews and Endorsements

For years consumers have shifted their buying habits from in-store purchases to online shopping. Thus, potential purchasers rely on online reviews to provide insight on a product or experience. Companies have recognized the impact positive or negative reviews can have on business, and this has incentivized companies to ensure they have excellent reviews. Companies have employed a myriad of tactics to increase reviews and ratings, including using fake reviews, suppressing negative reviews, and even paying for positive reviews.

These practices have raised alarm bells among regulators, some of whom believe such practices violate competition laws and may be considered unfair or deceptive. In June, the FTC, joined by AGs from California, Colorado, Florida, Illinois, Massachusetts, and New York secured a protective order banning Roomster Corp. from using deceptive reviews with a monetary judgment and civil penalties of $36.2 million. The order bans Roomster from paying or otherwise providing incentives for consumer reviews and from using or disseminating reviews where they have a relationship with the reviewer that might affect the review's weight or credibility.

New York AG Letitia James secured a $100,000 penalty from Dr. Mark Mohrmann and his practice, Highline Orthopedics, for manipulating online reviews to attract potential patients. The investigation revealed that Dr. Mohrmann and his wife suppressed negative reviews and artificially inflated positive reviews on various websites,

including ZocDoc, Google, Yelp, Healthgrades, Vitals, MD.com, RateMDs.com, and the Better Business Bureau. AG James emphasized the importance of authentic reviews in helping patients choose their health care providers and vowed to take more action against those attempting to mislead patients in New York.

Additionally, the FTC proposed a new rule aimed at preventing marketers from using deceptive review and endorsement practices. The rule would delineate clearly prohibited practices and empower the agency to seek civil penalties from violators. A coalition of 22 state AGs issued a letter in support of the new rule and offered suggestions for strengthening it.

Specifically, where the FTC rule would prohibit companies from using unjustified legal threats to prevent or remove a negative consumer review, the state AGs suggested language making agreements void or unenforceable. The motivation behind this recommendation is the concern about companies using nondisclosure agreements (NDAs) to limit consumer reviews. These NDAs are often part of the transaction or are in return for refunds. The state AGs also suggested rephrasing certain language to prevent a loophole in which companies might try to remove reviews under the guise that they are doing so for other, potentially legal, reasons — rather than because the reviews are negative.

These actions signify a growing commitment to combat these practices. The letter from the state AGs in support of the FTC and corresponding suggestions further underscores the need for companies to ensure they are maintaining authentic online reviews.

Telemarketing

In 2023, state AGs and federal regulators intensified their scrutiny of companies that violate telecommunication laws. Much of this was the result of Operation Stop Scam Calls, a joint effort by a bipartisan coalition of AGs from all states, the District of Columbia, the FTC, and DOJ. The initiative aims to combat illegal telemarketing, including robocalls, by targeting telemarketers, the companies that employ them, and the lead generators who provide consumer telephone numbers to make robocalls.

This initiative built on previous bipartisan efforts to curb illegal telemarketing and robocalls. Specifically, in September 2022, a bipartisan coalition of 51 AGs submitted comments to the Federal Communications Commission (FCC) supporting its proposal to expand anti-robocall rules and suggesting additional measures. This cross-party assembly of resources has amplified regulators' ability to combat illegal telemarketing practices.

For example, in May, 49 state AGs filed a lawsuit against Avid Telecom, its owner, and its vice president, alleging that they facilitated billions of robocalls in violation of the Telephone Consumer Protection Act. This is one of several actions taken by regulators. As of halfway through the year, 48 federal and 54 state agencies had already brought more

than 180 enforcement actions and other initiatives as part of Operation Stop Scam Calls.

This year marked a significant escalation in the efforts of state AGs and federal regulators to enforce telecommunications laws and combat illegal telemarketing practices. Moving forward, companies involved in telemarketing must ensure strict compliance with telecommunications laws to avoid running afoul of this increasingly vigilant regulatory environment.

Junk/Hidden Fees and Drip Pricing Practice

During the State of the Union address on February 7, President Joe Biden disapproved of "junk" and "hidden" fees and called upon Congress to pass legislation eliminating junk fees. Although the federal government is targeting junk and hidden fees, state AGs have battled these fees for some time, calling them unfair or deceptive when not clearly disclosed.

Junk fees are additional charges imposed on consumers that are often unrelated to the actual cost of goods or services, for example, processing fees, convenience charges, or resort fees. These fees are often characterized by their lack of transparency, becoming hidden fees. Some businesses also engage in drip pricing practices, a strategy where a business advertises an initial low price to attract consumers but gradually reveals additional fees during the customer's booking or purchasing process, giving a false impression of affordability to consumers that leads them to make decisions they might not otherwise make.

In addition to the FTC's proposed rule on junk and hidden fees in November, the FCC proposed a new rule in June that would require cable and satellite TV providers to give consumers the "all-in" price for the service they are offering up front.

This year, state AGs aimed to protect consumers by taking enforcement actions against businesses, promulgating proposed regulations, and championing laws that push for all-in pricing:

Enforcement Actions: In May, the Texas AG sued Hyatt Hotels for deceptive trade practices regarding the true price of hotel rooms. The Texas AG alleged that Hyatt charged consumers mandatory and unavoidable fees — such as resort fees, destination fees, or amenity fees — in addition to daily room rates. In September, Colorado, Oregon, and Pennsylvania AGs reached a similar settlement with Choice Hotels. These actions come on the heels of multiple AGs settling with another hotel chain over similar allegations. States have also taken similar actions against food delivery service fees, event ticketing fees, rental car fees, and cable and internet fees.

New California Law: California Senate Bill 478 (SB 478) was signed into law on October 7, and takes effect on July 1, 2024, prohibiting companies from hiding mandatory fees or charges from price claims. Specifically, the law adds the following to the methods of competition and acts or practices declared unlawful under the California Consumers Legal Remedies Act: "advertising, displaying, or offering a price for a good or service that does not include all mandatory fees or charges." Exemptions from the requirements include: (1) Taxes or fees imposed by a government on the transaction; (2) postage or carriage charges that will be reasonably and actually incurred to ship a physical good to the consumer; and (3) certain transactions involving, and/or fees and charges assessed by, airlines, automobile dealers and lessors, broadband internet providers, car rental companies, financial institutions, and tourism- and travel-related businesses, each of which is subject to existing disclosure laws.

Proposed Regulations in Massachusetts: In November, Massachusetts AG Andrea Campbell announced that her office proposed regulations to prohibit hidden junk fees. The proposed rules require that businesses disclose the "all-in"/total price of a product in a clear, conspicuous, and prominent manner. This includes all associated costs such as fees, interest, charges, or any other required expenses, at the time of advertising and presenting the product to consumers. The proposed rules also stipulate that sellers must clearly elucidate the nature and purpose of any fees and disclose whether they are obligatory or optional. Last, the proposed rules prohibit businesses from requiring submission of personal data, such as billing and credit card details, before revealing the complete price of a product.

PRIVACY + CYBER

State AGs play a critical role in enforcing state-level consumer data privacy laws, and many statutes reserve enforcement exclusively to the AGs. Responding to a growing trend, state legislatures across the U.S. continue to debate state-level consumer data privacy laws in the absence of federal legislation. Moreover, state AGs shape the regulatory data privacy landscape through enforcement actions, as well as legal and political influence. Indeed, 2023 proved to be a remarkable year in terms of state AGs exercising their authority under new statutes and bringing about significant changes in the regulatory landscape through enforcement and influence.

U.S. State Privacy Laws in 2023

Prior to 2023, five states had enacted comprehensive consumer privacy laws: California, Colorado, Connecticut, Utah, and Virginia. While these new state laws — or amendments, in the case of California — came into force this year, eight additional states passed their own privacy legislation:

State	Date of Enactment	Effective Date
Iowa	March 28, 2023	January 1, 2025
Indiana	May 3, 2023	January 1, 2026
Tennessee	May 11, 2023	July 1, 2025
Montana	May 19, 2023	October 24, 2024
Florida	June 6, 2023	July 1, 2024
Texas	June 18, 2023	July 1, 2024*
Delaware	June 30, 2023	January 1, 2025
Oregon	July 26, 2023	July 1, 2024

* Most of the provisions take effect on July 1, 2024, and the law takes full effect — including universal opt-out provisions — on January 1, 2025.

The laws of each state share some similarities regarding consumer rights and business obligations, but noticeably deviate on enforcement and the applicability and length of the right-to-cure period. There is currently pending privacy legislation in Maine, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, North Carolina, Ohio, Pennsylvania, and Wisconsin.

Washington and Nevada passed narrower privacy laws that address companies' collection of health data that is not otherwise covered under Health Insurance Portability and Accountability Act (HIPAA). Both laws implicate a wide array of health data, including biometric data, psychological and social interventions, bodily functions, vital signs, symptoms, or body measurements, among other data sets.

Shaping the Regulatory Landscape: AG Privacy Enforcement and Rulemaking

In many states, the state AG bears significant responsibility for further defining legislation through rulemaking. This is a critical aspect of consumer privacy laws because state AGs frequently have significant real-world experience investigating and prosecuting privacy violations, and that experience is critical for effective implementation of the law and the rules promulgated thereunder.

In Colorado, AG Phil Weiser enacted the final version of the Colorado Privacy Act (CPA) rules on March 15, granting Coloradans rights over their personal data. The CPA gives Coloradans access to their personal data collected by businesses, nonprofits, and other entities, with the right to delete or correct that data. It also provides more control over their personal data usage, including a universal opt-out mechanism to safeguard their personal data from sales, targeted advertising, and profiling activities.

In addition, AGs frequently issue guidance to companies to help them understand the law and how to comply (*i.e.*, avoid an enforcement action). One such example arose out of New York, where AG Letitia James released a guide to help companies implement effective data security measures that will safeguard the personal information of New York consumers. The guide offers a range of recommendations intended to help companies prevent data breaches and fortify their data security protocols, including (1) maintaining authentication controls; (2) encrypting sensitive information; (3) ensuring that vendors follow reasonable security practices; and (4) maintaining a data map, among other things. The guide also warns businesses against issuing misleading statements about data breaches and violating New York law.

State AGs, however, also engage in significant regulatory enforcement that shapes the privacy landscape. Using existing laws and applying them to novel applications brought about by rapid changes in technology, state AGs frequently lead regulators and legislators in solving complex regulatory issues through their position as chief law enforcement officers of their states. The rise of multistate investigations, wherein multiple jurisdictions join forces and share resources to bring about regulatory objectives, has further emboldened state AGs to take a vanguard position with respect to shaping the privacy regulatory environment across the U.S.

Throughout 2023, we reported on some of the most significant state AG privacy-related enforcement actions. These actions reflect a growing trend to protect consumer privacy and sensitive data in an increasingly data-dependent environment, where technology is designed to routinely track and analyze consumer behavior.

In Pennsylvania, AG Michelle Henry resolved a data breach investigation into a prominent grocery chain, Rutters, for $1 million. Rutters first learned of the security incident in May 2019, but after conducting an in-house investigation, it concluded that customer payment card information was not stolen. Approximately six months later, Mastercard flagged unusual payment card activity associated with customers who shopped at Rutters and required the company to investigate further. An investigation by an independent party found that the 2018-2019 security incident had resulted in the theft of at least 1.3 million different payment cards. The Rutters settlement reflects a growing trend of state AGs engaging in local-level enforcement following a data breach, which is attributable to proficiencies and expertise developed in state AG offices (often in the multistate context) over the past decade.

District of Columbia AG Brian Schwalb, along with the FTC and Connecticut, resolved a significant investigation into Easy Healthcare Corporation's alleged disclosure of sensitive ovulation and menstrual data. In 2020, the International Digital Accountability Council raised concerns that the Premom app, which is published by Easy Healthcare, shared sensitive user data with third parties, including two China-based companies flagged for questionable privacy practices. As a result of the investigation, Easy Healthcare agreed to several remedial measures intended to prevent

the disclosure of sensitive information to third parties and to pay a $100,000 penalty to the states involved with the investigation.

Occasionally, state agencies other than the AG are involved in shaping the regulatory privacy landscape. In Massachusetts, for example, the Gaming Commission proposed new sports wagering rules, targeting youth advertising and data privacy. The commission's data privacy regulation places restrictions on the use of bettors' confidential information and personally identifiable information. Licensed operators who violate the Massachusetts Sports Wagering Act are subject to a civil penalty.

While enforcement actions under the newer comprehensive privacy laws have yet to significantly materialize, California AG Rob Bonta is increasingly using his enforcement authority under the California Consumer Privacy Act (CCPA) to pursue violators. For example, in early 2023 Bonta announced an "investigative sweep" of businesses with mobile applications for allegedly failing to comply with the CCPA. This ongoing sweep targets popular mobile applications in the retail, travel, and food service industries that fail to offer a mechanism for consumers to opt out of data sales or that fail to process consumer opt-out requests, including requests submitted via an authorized agent like Permission Slip. Companies that are not in compliance can expect to receive — or maybe already have — an investigative letter or notice to cure within 30 days (although a notice to cure is no longer a requirement for CCPA liability).

Enforcement at the National Level

It is also worth mentioning that state AGs increasingly engage with federal regulators to shape privacy regulation at the national level. This often comes in the form of letters signed by a significant cohort of state AGs in support of new policy or revisions to existing rules. The AGs are also more frequently banding together to file amicus briefs in courts of appeal, including the U.S. Supreme Court, to support or oppose legal challenges that will have a substantial impact on regulatory enforcement.

One such example arises in the context of a challenge from Arkansas, Iowa, and Missouri, along with intervenors American Water Works Association and National Rural Water Association, which petitioned the Eighth Circuit to review the U.S. Environmental Protection Agency's (EPA) new rule requiring states to review and report cybersecurity threats to their public water systems (PWSs). The states' brief argues that the EPA's Cybersecurity Rule unlawfully imposes new legal requirements on states and PWSs and that the rule exceeds the EPA's statutory authority by ignoring congressional actions limiting cybersecurity requirements to large PWSs and changing the criteria for sanitary surveys through a memorandum. The EPA's new rule is consistent with efforts across the federal government to bolster the cybersecurity framework that protects critical infrastructure. The states' challenge to the EPA rule may ultimately be successful, but new regulations and legislation to address the same concerns are likely in a world that increasingly relies on complex technology that is susceptible to attack by bad actors.

What to Expect

As the U.S. attempts to catch up with global data privacy laws — and absent any comprehensive federal law — we anticipate that the trend of passing state-level privacy bills will continue into 2024. We also expect that related enforcement actions from state AGs will closely follow the effective dates of any newly passed legislation, as we have seen in California. Accordingly, companies that do business with consumers in states with currently or soon-to-be enforceable privacy laws should make certain that they are engaging in defensible privacy practices in accordance with the provisions of those states' laws. Even in states with pending or no legislation, AGs will likely continue to use existing laws to bring enforcement actions in the privacy space through multistate investigations and partnerships with other state and federal agencies. Violations of privacy and consumer protection regulations carry significant financial and reputational risk, and companies should pay close attention to new legislation, guidance, and related enforcement activity from state AGs to ensure preparedness and compliance.

ENVIRONMENTAL, SOCIAL + CORPORATE GOVERNANCE

Throughout 2023, several Republican AGs took action against the growing ESG movement. These efforts focused in particular on banks, asset managers, and other financial institutions that consider ESG metrics in their investment-related decision making, as well as companies that are members of coalitions dedicated to eliminating carbon emissions.

State Policy and Legislation

For example, in January, Utah AG Sean Reyes led a 21-state coalition in sending a letter to the nation's two largest proxy advisor firms, Institutional Shareholder Services and Glass, Lewis & Company, warning them that by "pledg[ing] to recommend … against" proposals that failed to implement environmental and social goals adequately, they were potentially violating their legal and contractual duties to advisees under state and federal law. Citing the firms' contracts with state investment vehicles (such as state retirement systems and pension funds), Reyes claimed that the firms' consideration of ESG factors violated the firms' duty to advise shareholders based solely on the economic value of an investment and the plan's economic best interest — even calling on Congress to investigate a proxy advisor for violations of federal law and SEC regulations.

Indiana AG Todd Rokita also took action against proxy advisors this year for similar reasons. In a press release, Rokita endorsed an Indiana bill that would expressly require those supervising the state's public retirement system's investments to discharge their duties "solely in the financial interests of the participants and beneficiaries of the public pension system," while also considering "only financial factors" to discharge the fiduciary's duties to the state. The bill (HB 1008) was subsequently passed by an overwhelming majority and was signed into law. As a result, Indiana law now prohibits the board of trustees of the Indiana public retirement system "from making an investment decision with the purpose of influencing any social or environmental policy or attempting to influence the governance of any corporation for nonfinancial purposes."

More recently, on September 12, 22 Republican state AGs — led by Tennessee AG Jonathan Skrmetti — sent a letter to members of the Net Zero Financial Services Provider Alliance (NZFSPA) warning that their commitment to support "global net zero greenhouse gas emissions by 2050 or sooner" may violate state and federal law. Specifically, the AGs expressed concerns that NZFSPA's commitments "may run afoul of" federal antitrust and state consumer protection statutes. The AGs asserted that NZFSPA members are all competitors and the agreement may violate federal antitrust laws; that NZFSPA's influence on the industry may constitute a UDAP violation; that the agreement will stifle innovation; and that the alliance could be misleading to consumers regarding the viability of the "activist climate agenda," thereby depriving consumers of objective and independent financial advice.

At least 20 states now have effective "anti-ESG" rules. In Florida, for example, newly enacted FL HB3 requires the state's chief financial officer to make investment decisions based solely on pecuniary factors and disallow the consideration of any social, political, or ideological interests when making investment decisions. Alabama, Arkansas, Indiana, Kansas, Missouri, Montana, New Hampshire, North Carolina, Texas, and Utah have passed similar anti-ESG bills. In contrast, there are eight states with "pro-ESG" rules (*i.e.*, rules that seek to protect and, in some cases, incentivize ESG-related investments). More than 75 additional anti- or pro-ESG bills are pending in current state legislative sessions across the U.S. In 2023 alone, lawmakers in 46 states introduced bills related to ESG investments. These state-level rules vary in

scope, structure, and effect, requiring companies to stay vigilant and consistent in their compliance efforts, which must necessarily be tailored to each state. Although the state-level bills adopted to date apply exclusively to the disposition or management of state funds, this does not prohibit state AGs from pursuing future action based on already existing laws such as state consumer protection and deceptive trade practices laws — as evidenced by AG Daniel Cameron's efforts in Kentucky and the targeting of the NZFSPA by 22 state AGs. Accordingly, compliance efforts must also account for local laws and regulations that may not explicitly reference or pertain to ESG implementation or consideration.

State Litigation

Another large AG-led coalition filed a lawsuit in the Northern District of Texas against the Biden administration, seeking a preliminary injunction to stop a Department of Labor rule that would allow fiduciary retirement fund managers to consider ESG factors in their investment decisions. The AGs argued that the Rule would violate the Administrative Procedure Act because it is arbitrary and capricious and exceeded authority under the Employee Retirement Income Security Act. On September 21, the court ultimately granted the department's motion and entered an order dismissing the case. Importantly, the court found that the department's rule was reasonable in light of its prior rulemakings, establishing that "ESG factors may have a direct relationship to the economic value of the plan's investment" and that "failing to consider ESG-related risk-return factors could constitute a violation of the duty or prudence in some circumstances." In upholding the rule, the court found it significant that the regulation did not necessarily *mandate* the consideration of ESG factors, but rather provided "that risk and return factors may include ESG factors under some circumstances" and still required those factors to reflect "a reasonable assessment of its impact on risk-return." The AGs are currently appealing the decision, while members of Congress are attempting to repeal the rule legislatively.

In another ongoing ESG-related dispute that began in October 2022, a Kentucky Bankers Association's lawsuit against Kentucky AG Daniel Cameron has been remanded to state court after being removed to the U.S. District Court for the Eastern District of Kentucky. The lawsuit originated when Cameron sent subpoenas and civil investigative demands to six national banks that were members of the Net Zero Banking Alliance seeking all documents related to their use of ESG metrics in investment practices to investigate possible violations of Kentucky's state consumer protection act and federal antitrust law. The association responded by suing Cameron in Franklin County Circuit Court to enjoin and declare Cameron's investigation as unlawful. The association asserts that Cameron exceeded his statutory authority as AG, violated the companies' First Amendment rights, and acted inconsistently with a Kentucky law establishing particular procedures for state actions against companies engaging in alleged energy sector boycotts (namely that, according to the association, the state's treasurer — not the AG — is charged with taking such actions). In September 2023, the Eastern District issued an opinion granting Cameron's motion to dismiss in part, by dismissing the association's First Amendment claim for lack of standing and the remaining state law claims for lack of jurisdiction, and then remanded the case to state court for further proceedings.

SOLAR ENERGY

Following an active 2022, this year confirmed the trend of increased oversight of the solar energy industry. A rapidly increasing demand for sustainable energy sources has sparked an influx of alternative energy companies, particularly in the residential solar market. The rapid expansion has drawn some bad actors into the industry, which has resulted in increased attention, multiple investigations, and several lawsuits and consumer class actions. In both the regulatory and litigation contexts, complaints have typically focused on the following categories:

1. Cost and savings misrepresentations, particularly solar installation companies that allegedly exaggerate their systems' potential to save consumers money;
2. Cost and savings where solar installation companies have allegedly overstated consumers' access to certain solar tax credits or overpromised the impact of those tax credits on consumers' utility bills and loan obligations; and
3. High-pressure sales tactics that have included door-to-door solicitation, misrepresentations that consumers have signed contracts, following consumers in public spaces, and robocalling consumers.

Enforcement actions and investigations typically allege purported violations of states' unfair and deceptive or abusive practices acts or related common law claims.

In addition to the major enforcement activity detailed below, enforcement actions have been brought against solar installation companies by the AGs for the states of Arizona, Minnesota, and New Mexico.

Arkansas AG Issues Enforcement Advisory

On October 5, Arkansas AG Tim Griffin sent a letter to solar installation companies containing an enforcement advisory, which detailed solar installation companies' legal obligations under the Arkansas Deceptive Trade Practices Act. Specifically, Griffin's letter took aim at solar installation companies' predatory sales tactics and contracts that do not comply with applicable law.

The letter highlighted several examples of sales practices that the AG is attempting to curb, all of which arose from consumer complaints, including:

- Issuing false information regarding a consumer's eligibility for tax rebates.
- Leading customers to believe the solar panel installation will be covered by government-funded grants, when in fact a customer may not qualify.
- Alluding to nonexistent partnerships with electric utilities.
- Implying consumers will no longer receive an electric bill.
- Providing insufficient or nonexistent customer service.

Griffin's letter further detailed deficiencies his office has seen in solar installation contracts. Many consumers reported not receiving copies of installation contracts or cancellation forms. Spanish-speaking consumers have allegedly not received installation contracts and accompanying documents in their native language as required under the Home Solicitation Sales Act.

Missouri AG Sues Power Home Solar LLC

Former Missouri AG Eric Schmitt sued North Carolina-based Power Home Solar LLC dba Pink Energy (Power Home) — alleging the solar company misrepresented the effectiveness and safety of its energy-generating systems for residential homes in violation of the Missouri Merchandising Practices Act. The lawsuit seeks injunctive relief, restitution, and civil penalties.

The complaint alleged that Power Home's sales representatives misled Missouri homeowners by representing that they could satisfy nearly their entire need for electricity from one of Power Home's systems. In reality, Power Home's systems allegedly did not work at all. Despite promises to the contrary, consumers complained that Power Home failed to properly install the system and often caused physical damage to a customer's home — including by installing a defective component known to cause consumers' homes to catch fire.

Connecticut AG Sues Vision Solar

In March, the Connecticut AG sued Vision Solar after consumers complained about the company's misrepresentations, "high pressure" sales tactics, and "predatory practices" in violation of the Connecticut Unfair Trade Practices Act.

In the complaint, the AG alleged that Vision Solar representatives would make in-home visits to potential customers and aggressively pressure them into agreeing to expensive contracts after just one appointment — sometimes even after being told to leave the consumers' home. Representatives allegedly told consumers that signing an agreement was merely part of the preapproval process, when in fact, the consumer was entering into a multiyear agreement. The complaint also alleged that Vision Solar made false representations about the tax benefits of installing solar systems, including that a consumer would gain the benefit of a tax credit despite not knowing whether the consumer would qualify. After securing a contract, Vision Solar allegedly installed the solar panels without permits, leaving the customers unable to gain any benefit from the panels.

Florida AG Sues MC Solar, Vision Solar, and SetUp My Solar

On November 7, Florida AG Ashley Moody and her office filed suit against MC Solar alleging violations of the Florida Deceptive and Unfair Trade Practices Act, the Florida Solicitation Sales Act, and others. Moody alleged that MC Solar "scammed hundreds of Floridians" and that their "deceptive and unscrupulous business practices were extreme." MC Solar allegedly enticed consumers to commit to a solar contract by offering federal tax incentives and guaranteed warranties, and then took money without installing solar systems or abandoned the job alltogether. They allegedly damaged many consumers' homes with reckless and defective performance. When systems were installed, they did not pass inspection and/or did not connect to the electrical grid. The AG also alleged MC Solar abandoned contracts, damaged homes, forged applications, caused liens to be taken, and threatened consumers with legal action.

The lawsuit seeks an injunction to permanently ban MC Solar from engaging in certain activities, along with restitution and civil penalties.

In addition, Moody filed lawsuits against Vision Solar and SetUp My Solar for allegedly deceiving Floridians in violation of Florida's Deceptive and Unfair Trade Practices Act. The lawsuits are the result of investigations, which allegedly revealed that the companies misled consumers about solar panel system installation processes, pricing, and incentives, and caused property damage.

Moody is seeking to permanently enjoin both companies from making unsubstantiated or misleading claims, or engaging in any business practice that misleads consumers about solar panel systems. The lawsuits also seek to recover refunds and other relief for consumers.

Rhode Island AG Sues Smart Green Solar, LLC

Rhode Island AG Peter F. Neronha and his office filed a complaint against Smart Green Solar, LLC (Smart Green), and its CEO, Jasjit Gotra, along with two company executives, Christopher Schiavone and George Nixon, as individually named defendants for allegedly violating the Rhode Island Deceptive Trade Practices Act. The complaint alleged that Smart Green offered its products and services door-to-door making unsolicited sales pitches for residential solar panel systems. Smart Green allegedly engaged in unfair and deceptive trade practices by misrepresenting tax credits, training practices, savings/electricity production, and cancellation policies. The AG requests injunctive relief, including a requirement that the company provide customers with itemized invoices, a permanent prohibition on charging customers for what Smart Green classified as a "sign-up bonus," and an order banning individual defendants Gotra and Schiavone from engaging in consumer sales in Rhode Island.

What to Expect

Recent AG scrutiny coupled with private litigation has made clear that solar companies will continue to face scrutiny around marketing and sales practices. Regulators are already implementing measures to address public concerns and prevent future consumer protection violations. Louisiana, Massachusetts, Minnesota, Mississippi, New Mexico, New York, and Vermont have released state-specific guides to help homeowners understand residential solar contract terms and system financing options. Other states, like Utah and Maryland, have enacted new regulations requiring solar installation companies to disclose certain details about their systems and transactions during the initial customer interaction. With continued regulations expected, solar installation companies should strongly consider building out a robust regulatory compliance team and engaging outside counsel to ensure they navigate the increasingly complex regulatory framework without complications.