

# AG Watch: Texas Expands Use Of Consumer Protection Laws

By **Paul Singer, Beth Chun and Andrea deLorimier** (May 27, 2025)

*This article is part of a regular column that features insights from former state attorney general office leaders, who share observations on that state's latest enforcement news and trends, and compliance implications.*

In recent years under Attorney General Ken Paxton, Texas has demonstrated the breadth of its public interest authority by bringing actions in areas not traditionally associated with consumer protection law.

For example, on April 8, Paxton announced that his office had issued a civil investigative demand to USA Fencing after the team disqualified a biologically female competitor for "taking a knee instead of competing against a biological male."<sup>[1]</sup>

The office's press release explains that this action, and USA Fencing's policies more broadly, may constitute "false, deceptive, and misleading acts and practices" under the Texas Deceptive Trade Practices Act.<sup>[2]</sup> USA Fencing responded to the incident by explaining that the fencer was not disqualified for refusing to compete against a biological male, but instead for violating a team policy providing that athletes may not refuse to fence against another athlete who is properly entered in the match.

Separate from that policy, USA Fencing also has a specific policy regarding transgender and nonbinary athletes providing that the team does not discriminate on the basis of gender identity and that permits athletes to participate in events consistent with their gender identity.<sup>[3]</sup>

However, given regulatory uncertainty, USA Fencing recently previewed a revised policy providing that athletes must compete according to their biological sex.<sup>[4]</sup> That policy will become effective only if "oversight bodies" or "U.S. federal law" require such updates.<sup>[5]</sup>

This action is just one of many brought by Texas recently under its expansive consumer protection authority. For over 50 years, Texas, like most other states, has empowered consumers through broad consumer protection laws, including the DTPA.<sup>[6]</sup>

Also like many states, Texas law differentiates between an individual cause of action under the DTPA and an action brought in the public interest by the state itself. The latter enjoys a much broader authority and an extremely low barrier to suit, which, when coupled with presuit investigative powers and significant remedies, gives the state a powerful tool to combat fraud.

While historically the DTPA has been used by the state in more traditional cases involving fraudulent conduct, such as deceptive or misleading advertising, or misrepresenting the features of a good or service, the state's authority is arguably much broader.



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Since taking office in 2015, Paxton has continued to push the envelope of the type of conduct covered by the DTPA.

## **Paxton's Use of DTPA Authority**

### ***Opioids and Synthetic Drugs***

Similar to the tobacco litigation from the 1990s, Paxton initiated a series of public health-oriented cases that were rooted in his DTPA authority. Most notably has been his efforts in litigating against and settling with multiple manufacturers, distributors and retailers related to the sale of prescription opioids throughout the state.

While these cases have drawn attention for the amount of recoveries (approximately \$3 billion in Texas alone), the legal theories used in part draw on misrepresentations that were made not to the consumers who ultimately used the medications, but to the doctors who prescribed them. One such example is 2018's Texas v. Purdue Pharma, in the 345th Judicial District Court of Travis County, Texas.[7]

Texas also used its broad authority in reaching a settlement with e-cigarette company JUUL in 2022 over allegations of deceptive and misleading marketing of its products to children.[8]

Texas has used this same authority against manufacturers of synthetic cannabinoids.[9] In 2018, for example, in Texas v. Happie Hippie Partnership, in the 13th Judicial District Court of Harris County, Texas, Paxton argued that Happie Hippie, a smoke shop, and its operators deliberately lead consumers to believe that synthetic drugs sold at their business were safe and legal.

Specifically, Happie Hippie included on its packaging a claim that its products were "legal for sale in all 50 states." Paxton argued that this was false and misleading because these drugs can cause "serious side effects" and "manufacturers and distributors of synthetic cannabinoids can face civil penalties of up to \$20,000 per violation" under Section 17.46(b)(31) of the DTPA.[10]

Paxton brought similar claims against dozens of other synthetic drug stores, explaining in another case that "[his] office will not tolerate synthetic drugs being marketed as safe and legal substances when they present such devastating health risks to users."[11]

### ***Human Trafficking***

In addition to addressing opioids, the DTPA has also been used in protecting public safety by shutting down illicit massage parlors involved in human trafficking — like the 2020 decision in Texas v. Happy Foot Spa in the 333rd Judicial District Court of Harris County, Texas.[12]

In such cases, the state argued that the massage parlors were deceptively operating without the proper licenses. Like cannabinoids, operating a massage parlor without a proper license has a specific statutory provision under the DTPA.[13]

### ***DEI and ESG***

Paxton has also used his DTPA authority in recent years to bring actions related to companies' diversity, equity and inclusion policies and financial institutions' implementation of environmental, social and governance factors in making investment decisions.

While on the surface these reflect sensitive political-oriented policy objectives, Paxton has found consumer protection anchors in each that he has utilized in investigations and enforcement actions.

For example, in November 2024, Paxton led a multistate coalition in the lawsuit *Texas v. Blackrock Inc. & Vanguard Group Inc.*, alleging that Blackrock and Vanguard conspired to manipulate the energy market by utilizing their ownership of shares in the coal market to pressure coal companies into adhering to environmental principles.[14] Notably, part of these allegations included misleading investors about the companies' ESG strategies, which the states claimed violated consumer protection laws including the DTPA.[15]

In December 2024, Paxton sued the NCAA in *Texas v. National Collegiate Athletic Association* in the 237th Judicial District Court of Lubbock County, Texas, for marketing sporting events as "women's" competitions but allowing transgender individuals born male to compete, alleging that doing so constituted a false, deceptive or misleading practice that was "designed to trick consumers." [16]

In all, these latest actions are a significant shift from the more traditional use of the DTPA to combat fraud in the state but demonstrate the breadth of powers the attorney general can wield, and the seemingly countless situations that can lead to liability under the DTPA.

### **State Actions Under the DTPA**

The attorney general has unique authority to bring suit under the DTPA, which can be found in Section 17.47 of the Texas Business and Commerce Code.[17] This section empowers the attorney general to obtain a temporary or permanent injunction, civil penalties of \$10,000 per violation, and restitution for identifiable consumers.[18]

To bring an action, the attorney general needs only to demonstrate that the consumer protection division has reason to believe that a person has engaged, is engaging, or is about to engage in conduct declared unlawful by the DTPA, and the matter would be in the public interest (an undefined term).[19]

What is notable however is what isn't found in these requirements.

### ***There is no need to show consumer standing.***

Unlike a private citizen, who must show that they meet the statutory definition of a consumer under the DTPA, the state takes the position that it does not need to identify any consumers when it brings an action.

In fact, the attorney general has historically brought cases where the harmed individuals would not be able to meet the statutory definition of a consumer, leaving the attorney general as the only plaintiff that could pursue a DTPA violation. The Texas Supreme Court acknowledged this key difference in *Riverside National Bank v. Lewis* in 1980:

A 'person' may have engaged in a deceptive act by presenting any misleading information concerning any item of value.[20] Any person engaging in such deceptive practices may be subjected to a suit by the Consumer Protection Division of the Attorney General's Office, under § 17.47. But, one who engages in deceptive acts may not be subjected to a private suit for damages under the Act unless the aggrieved party is a consumer.[21]

### ***There is no mention of "reliance" or "harm."***

Similar to the argument that a consumer may not be required under Section 17.47 of the DTPA, the state will also point to the fact that Section 17.47 does not mention reliance or harm as a threshold to suit.

Indeed, the attorney general has at times brought actions before any harm could have occurred, consistent with the language of Section 17.47, which allows for injunctive relief against a person who is about to engage in illegal conduct.[22] However, reliance and harm will be relevant in determining appropriate remedies.

***There is no objective standard.***

Notably, the section applies when the consumer protection division itself has reason to believe a violation has occurred or will occur and is in the public interest. The language of the DTPA appears to give broad discretion to the attorney general and the consumer division, which may create a significant bar for anyone trying to challenge whether the attorney general has standing to investigate or prosecute a consumer protection violation.

Equally important is the breadth of what is "declared unlawful" under the DTPA when the state is the plaintiff. While individual consumers are mostly limited to bringing actions for violations of the "laundry list" of conduct found in Section 17.46(b), the state is able to bring an action under Section 17.47(a), which prohibits "false, misleading, or deceptive acts or practices in the conduct of any trade or commerce."

"Trade and commerce" is broadly defined as the "advertising, offering for sale, sale, lease, or distribution of any good or service, of any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value." [23]

**Takeaways**

For companies considering their compliance practices, there are several takeaways from these recent trends by Paxton.

First, there should be an acknowledgment that the Texas Legislature has given the attorney general broad authority to investigate and prosecute claims that are false, deceptive and misleading, which can touch virtually all aspects of trade or commerce in the state.

The legislature has considered amendments to the DTPA in the past that would have the effect of reining in some of this authority but has consistently rejected these efforts. This tacit approval of Paxton's actions should serve as a reminder that nearly all practices within a company may be subject to review by the office. As a result, topics that may seem more policy-driven can still find themselves addressed through consumer protection tools.

This power may have limits, however, as the breadth of this authority is also under judicial review. Recent actions by the office have prompted litigation challenging the scope of the attorney general's authority. For example, in November 2023, Paxton launched an investigation against Media Matters following its report that social media company X had placed advertisements for major national brands alongside white supremacist and antisemitic content.

Rather than respond to the civil investigative demand, Media Matters challenged the attorneys general authority in *Media Matters for America v. Paxton* in the U.S. District Court for the District of Columbia, alleging violations of the First Amendment.[24] At the district court level, a preliminary injunction was granted staying the enforcement of the civil

investigative demand, finding that the investigation had a chilling effect on Media Matters' First Amendment rights. That case remains on appeal.

Another lesson is that Texas has committed the resources necessary to pursue these investigations and is prepared to both defend challenges to its authority and aggressively enforce its laws. While some state attorneys general offices have limited resources for consumer protection enforcement, Texas' consumer protection division is a well-staffed team that spans multiple cities in the state and has the ability to pull resources from other areas of the attorney general's office and its approximately 4,000 staff members.

The consumer division itself is divided into several teams, able to handle a variety of specialized topics. As a result, the office will likely dig into a matter and will be prepared to fight, no matter how large and well-funded a target may be.

So, for companies that find themselves on the receiving end of a civil investigative demand or lawsuit, they should not assume that they can overwhelm the office's resources when defending the matter, as the office will be able to allocate sufficient resources to staff the matter.

Finally, it is important to recognize that in most of these cases, the DTPA "hook" that is utilized is based on a theory of some express or implied representation, or an omission of material information, that ultimately misleads the public about the company's practices.

Central to this analysis is how the public perceives a business and its goods or services. As such, it is extremely valuable for businesses operating in Texas to continuously evaluate their public-facing statements to ensure they do not unintentionally fall onto the attorneys general radar.

For example, it is important for businesses to review online complaints, brand websites, social media and other sources for accuracy and consistency. Businesses should ensure that statements do not conflict and can't arguably mislead the public — since Texas may argue ultimately that the "consumer" being protected may not be the "customer."

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***Disclosure: Paul Singer and Beth Chun represented the state of Texas in the opioid and JUUL matters mentioned in the article.***

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[1] Attorney General Ken Paxton Announces Investigation into USA Fencing for Violating State Law, Ken Paxton Attorney General of Texas (April 8, 2025), <https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-announces-investigation-usa-fencing-violating-state-law>.

[2] See *id.*

[3] USA Fencing Board Prepares for Potential Changes from Governing Bodies on Transgender and Non-Binary Athlete Eligibility Policy, USA Fencing (April 18, 2025), <https://www.usafencing.org/transgender-and-nonbinary-policy>.

[4] <https://www.usafencing.org/news/2025/april/18/usa-fencing-board-prepares-for-potential-changes-from-governing-bodies-on-transgender-and-non-binary-athlete-eligibility-policy>.

[5] *Id.*

[6] Tex. Bus. & Comm. § 17.47.

[7] *Texas v. Purdue Pharma L.P. et al.*, No. D-1-GN-18-002403 (345th Judicial District Court, Travis County, Tex., May 15, 2018).

[8] Paxton Announces \$439 Million Multistate Settlement With JUUL for Deceptive Marketing and Sales Practices; Texas to Recover \$42.8 Million, Ken Paxton Attorney General of Texas (Sept. 6, 2022), <https://www.texasattorneygeneral.gov/news/releases/paxton-announces-439-million-multistate-settlement-juul-deceptive-marketing-and-sales-practices>.

[9] See, e.g., *Texas v. Happie Hippie Partnership et al.*, No. 2016-70877 (113th Judicial District Court, Harris County, Tex. March 8, 2018).

[10] AG Paxton Obtains \$2 Million Judgment Against Happie Hippie Smoke Shop for Selling Illegal Synthetic Drugs, Ken Paxton Attorney General of Texas (April 20, 2018), <https://www.texasattorneygeneral.gov/news/releases/ag-paxton-obtains-2-million-judgment-against-happie-hippie-smoke-shop-selling-illegal-synthetic>.

[11] AG Paxton: Permanent Injunction Ends Illegal Sale of Synthetic Drugs by San Antonio Convenience Store, Ken Paxton Attorney General of Texas (Jan. 12, 2018), <https://www.texasattorneygeneral.gov/news/releases/ag-paxton-permanent-injunction-ends-illegal-sale-synthetic-drugs-san-antonio-convenience-store>.

[12] See, e.g., *Texas v. Happy Foot Spa*, No. 2020-14987 (333rd Judicial District Court, Harris County, Tex. March 5, 2020).

[13] Tex. Bus. & Comm. § 17.46(b)(33).

[14] Attorney General Ken Paxton Sues BlackRock, State Street, and Vanguard for Illegally Conspiring to Manipulate Energy Markets, Driving Up Costs for Consumers, Ken Paxton Attorney General of Texas (Nov. 27, 2024), <https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-sues-blackrock-state-street-and-vanguard-illegally-conspiring-manipulate>.

[15] *Id.*

[16] Attorney General Ken Paxton Demands NCAA Stop Allowing Biological Males to Compete in Women's Sports After Intentionally Deceptive Policy Change, Ken Paxton Attorney General of Texas (Feb. 20, 2025), <https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-demands-ncaa-stop-allowing-biological-males-compete-womens-sports-after>.

[17] Tex. Bus. & Com. Code § 17.47.

[18] Id.

[19] Id.

[20] See Tex. Bus. & Com. Code §§ 17.46(a), 17.45(6).

[21] Riverside at 173.

[22] West et al. v. Texas, No. 03-05-00724-cv (Tex. App. – Austin 2006).

[23] Tex. Bus. & Com. § 17.46(b).

[24] Media Matters for America et al., v. Paxton, No. 24-7059 (D.C. Cir. 2024).