

State AGs and Consumer Protection: What We Learned From ... Michigan

Paul L. Singer, Abigail Stempson, Beth Bolen Chun, Andrea deLorimier

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What's going on with Michigan's consumer protection statute? How does the Michigan Attorney General's Office operate? And what are its enforcement priorities? Michigan Attorney General Dana Nessel, along with two members of her staff, Jason Evans (Michigan Corporate Oversight Division Chief) and Darrin Fowler (Assistant Attorney General), joined Kelley Drye to answer these questions and more. Here's what we learned.

About Michigan's Consumer Protection Statute

To kick off the discussion, AG Nessel explained the background of her state's consumer protection statute. When the Michigan Consumer Protection Act (MCPA) passed in 1976, it was one of the most powerful UDAP statutes in the country: it broadly prohibited unfair, unconscionable, or deceptive acts and practices in trade or commerce (including a laundry list of 29 categories of prohibited conduct), defined "trade or commerce" very broadly, provided consumers a private right of action (including the ability to bring class actions), and allowed for numerous consumer remedies.

In 1999, however, the Michigan Supreme Court dramatically reduced the scope of the MCPA. In *Smith v. Globe Life Insurance*, the Michigan Supreme Court examined a MCPA exemption stating: "This act shall not apply to ... [a] transaction or conduct specifically authorized under laws administered by a regulatory board or officer acting under statutory authority of this state or the United States." The court interpreted this provision extremely broadly, holding that businesses already subject to regulation are beyond the reach of the MCPA. The Supreme Court affirmed this decision in the 2007 case of *Liss v Lewiston Richards, Inc.*

In effect, the *Smith* and *Liss* decisions preclude plaintiffs and the Michigan Attorney General's office from litigating or investigating any suspected illegal business practice where the target business sells products or services subject to regulation. Attorney General Nessel specifically described the decisions' effect on everything from automobile sales, robocalls, price gouging by grocery stores, and home repair services, because those industries are all regulated by state or federal agencies. AG Nessel further explained that the Act is effectively toothless, lags behind other states' consumer protection statutes, and in many instances provides a "free pass" for egregious conduct.

Last year, at the Michigan AG's request, the Michigan Supreme Court agreed to hear arguments on whether *Smith* and *Liss* should be reversed.

About the Michigan Attorney General's Office and Investigatory Processes

In Michigan, attorneys general are elected for four-year terms. The Michigan AG's office houses its consumer protection authority within its Corporate Oversight Division, which employs roughly 30-40 people.

The MCPA, in contrast to most state consumer protection statutes, requires the Michigan AG to petition a Michigan circuit court and show probable cause prior to issuing an investigative subpoena. While the contours of these requests are not prescribed by statute or case law, the office regularly asks the court for broad authority to investigate legal violations to avoid the need for follow-up court appearances. Given this dynamic, the Michigan AG's subpoenas are not confidential (however, any documents or statements received in response to the subpoena are confidential). After receipt, subpoena recipients can object to the subpoena or move to set it aside.

When the Michigan AG settles with companies, it aims to obtain fencing-in relief to protect consumers from future violations and may seek civil penalties if "knowing" law violations have occurred. The office can also seek restitution, and does so on a case-by-case basis.

In light of the limitations on the MCPA, Michigan routinely issues consumer alerts relating to current scams and works closely with other states and federal entities, such as the FTC and BBB, to conduct investigations and raise consumer awareness.

Michigan Consumer Protection 2024 Wins and 2025 Priorities

In 2024, the Michigan AG's office [took action](#) against companies offering tree removal services that left consumers in the dark regarding the true price of the services and that often subjected consumers to astronomical bills. The office will continue to crack down on these practices in 2025. Moreover, the office will aim to combat usurious contracts, unfair or deceptive cancellation fees, and pet-related scams (our team recently described some pet-related attorney general actions [here](#)).

The office is also hopeful that 2025 will bring the passage of a Michigan data breach law and comprehensive data privacy statute, particularly given the bipartisan nature of the issue and the fact that such a comprehensive privacy bill [nearly passed](#) in 2024.

Our Take

Because a reversal of the *Smith* and *Liss* decisions would turbocharge the Michigan AG's ability combat unfair and deceptive and potentially bring about an influx of consumer class actions in the state, businesses and practitioners alike should be on the lookout for updates from the Michigan Supreme Court. Companies should also continue to monitor for the passage of new data privacy laws in the state.

The full webinar is available to watch [here](#). To catch up and read the coverage of all our previous state AG webinars, click [here](#).