

# State AGs and Consumer Protection: What We Learned from ....North Carolina

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Our [State AG webinar series](#) continues, this time with Consumer Protection Division Director Kevin Anderson and Deputy General Counsel Daniel Mosteller of the North Carolina Attorney General's Office (NC AGO). During our webinar, we learned about the office's structure, consumer protection work as it relates to public health issues, and the tools they have pursuant to the consumer protection laws of North Carolina. In case you missed it, [here](#) is a recording of the webinar. We have also recapped what we learned below.

## General Office Information

North Carolina elects its attorney general (AG) during the same cycle as the US presidential election. The AG oversees the Consumer Protection Division which also handles antitrust and charities matters. The division has approximately 20 attorneys, plus other staff members. The NC AGO promotes a "two-way dialogue" which takes place between the attorneys in the division and the front office to determine the office's consumer protection priorities. The AG will set an agenda based on constituent needs. In parallel, the division continually works to spot new consumer protection issues to bring to the AG's attention.

The NC AGO receives consumer complaints about a range of unfair or deceptive acts conducted within the state. [Consumers can file complaints with the office](#), which in turn, sends the complaints to the businesses at issue, asking for their voluntary response, with the ultimate goal of resolving disputes. Complaint specialists handle these complaints, assisting consumers and businesses with the process, and logging complaints into a database so that the office can keep an eye on trends and issues that need investigating. Last year, the office received over 20,000 written consumer complaints—a large increase compared to ten years ago.

In regard to consumer protection investigations, like most states, the NC AGO works with other states, which is often termed a multistate investigation. This allows the NC AGO to leverage its limited resources to investigate large entities and complex matters. However, the NC AGO is also willing to forego the multistate route, undertake investigations, file lawsuits, and settle matters on its own. Determining whether to pursue a matter on a single state or multistate basis depends on the circumstances. For example, the NC AGO settled a [lawsuit with JUUL](#) on its own, even though a related multistate investigation was ongoing regarding the vaping product.

## UDAP Law

North Carolina's "UDAP" (unfair and deceptive acts and practices) law is known as the [North Carolina Unfair and Deceptive Trade Practices Act](#) (NC UDTPA). Similar to other states, the law grants the AG

authority to conduct pre-suit investigations that includes the ability to serve civil investigative demands (CIDs) to request documents and take statements. Important to note, North Carolina's CIDs are not confidential, even where some of the responsive materials may be.

The NC UDTPA does not include a provision that details how a party can object to a CID nor is there a provision that expressly prohibits parties from objecting to a CID; however, the AG can go to court to enforce compliance with the CID (though this is an unusual posture that is not common in North Carolina).

Under the NC UDTPA, the AG may enter into consent judgments with the court that is filed with the court. The AG may also enter into settlement agreements that do not require that a complaint be filed. In regard to litigation, no pre-suit notice is required, but the NC AGO may provide it as a matter of courtesy.

As for remedies, the AG may seek civil penalties of up to \$5,000 per "violation," an undefined term that may be defined differently depending on the matter. The AG may also seek restitution and disgorgement. In some cases, the office will prioritize restitution over penalties, particularly if the financial condition of the company limits the amount of money that the office can recover. Settlement agreements typically include language that allows the AG to pursue a case against the party in court if there are signs of noncompliance. Important to note is that there is no statute of limitations for allegations brought under the NC UDTPA.

## **Other Laws**

The NC UDTPA grants the AG authority to enforce [price gouging laws](#). Price gouging laws are triggered when the governor declares a state of emergency or there is an "abnormal market disruption." If either occur, the law prohibits the charging of prices that are "unreasonably excessive." Violations of price gouging fall under the NC UDTPA, which as previously stated, includes penalties of up to \$5,000 per violation.

North Carolina also enforces an [auto renewal statute](#) under the NC UDTPA, but does not have a statewide privacy law.

## **Consumer Protection and Public Health Issues**

The NC AGO is very active in the public health space, using traditional consumer protection laws to protect people's health and safety. The NC AGO commented that [opioids](#) continue to be a priority for enforcement. Additionally, as we discussed above, North Carolina filed suit against JUUL, alleging that the company's marketing was deceptively targeting children among other claims. The case settled and the company is required to pay \$40 million in addition to terms of injunctive relief.

Notably, North Carolina was the first state to settle with JUUL and included a most favored nation clause ("MFN clause") in its settlement agreement. A MFN clause is a provision that says if there are subsequent settlements that would be more favorable to the state than the previous settlement, then the state can petition the court to obtain that type of relief. North Carolina included this provision to ensure they get the benefit of any subsequent settlements with more favorable terms.

On trend with other states, the NC AGO is prioritizing children's emotional and mental health as it relates to social media and has used its "power of the pen" to write letters to [industry players](#) and [Congress](#), advocating for the protection of children. The NC AGO recently also filed an [amicus brief](#) in the Supreme Court case, *Gonzalez v. Google LLC*, urging the Court to interpret Section 230 of the federal Communications Decency Act (1996) narrowly to ensure technology companies remain

accountable to state consumer protection laws.

Be sure to join us for our next State AG webinar on March 23 where we will learn from the Ohio Attorney General's Office. Click [here](#) for more information.