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STATE ATTORNEYS GENERAL PRACTICE

2024 State AG Year in Review

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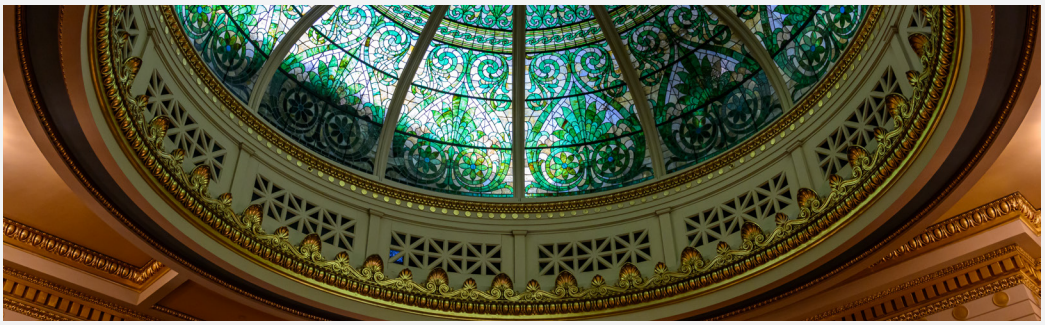

State attorneys general (AGs) continue to play a crucial role in shaping the regulatory landscape by leveraging their expertise and resources to influence policy and practice. The political nature of the AGs' offices across the United States necessitates prompt responses to constituent concerns. This political agility, combined with the AGs' authority to address both local and national issues, underscores their significant influence in the current regulatory environment.

Our *2024 State AG Year in Review* provides a comprehensive overview of the evolving regulatory landscape, highlighting key events and trends that defined the year. While we cannot predict the future with certainty, examining the AGs' actions over the past year offers valuable insights into potential regulatory directions. The rapid changes from year to year emphasize the need for businesses to stay informed and adapt to regulatory shifts to effectively manage compliance and mitigate risks.

State AGs are at the forefront of consumer protection across various sectors. The *2024 Year in Review* emphasizes their focus on several key areas, including: (1) antitrust; (2) artificial intelligence; (3) consumer financial services; (4) environmental and energy; (5) marketing and advertising; (6) pharma and health sciences; (7) privacy and cyber; and (8) private equity.

As the only law firm with two attorneys ranked Band 1 in *Chambers USA* and one of the few ranked nationwide, our team is committed to guiding companies through current challenges and preparing for future obligations, enabling them to concentrate on business growth rather than regulatory concerns. We hope that this *2024 Year in Review* will be a valuable resource in these efforts.

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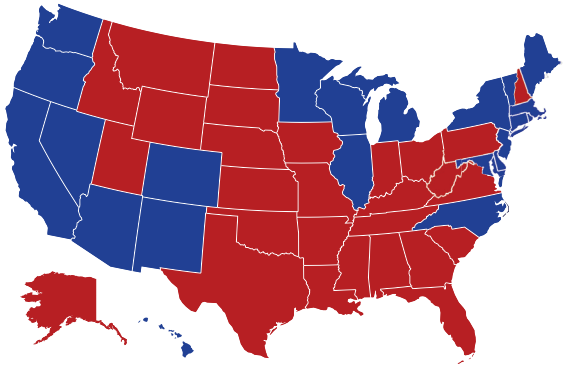
2024 State AG Elections

After the 2024 elections, Republicans now hold 28 offices nationwide, with Democrats holding 23, including the District of Columbia.



Democratic States

Republican States

- 28 Republican AGs
- 23 Democratic AGs

The 2024 state AG elections brought notable leadership changes, reshaping the political and regulatory landscape moving forward. Notable outcomes included several incumbents retaining their positions and new leaders stepping into office in pivotal states.

INCUMBENTS REELECTED

In 2024, AGs Andrew Bailey of Missouri, Todd Rokita of Indiana, Austin Knudsen of Montana, and Charity Clark of Vermont successfully defended their seats, securing additional terms to continue their service. The reelections of these law enforcement officers provide continuity in key offices with well-established policy priorities.

LEADERSHIP CHANGES

Meanwhile, six states elected new AGs in November, bringing fresh perspectives and priorities:

- **North Carolina:** Jeff Jackson (D), a former prosecutor, will replace Josh Stein (D), who won the governor's race. Jackson is expected to focus on criminal justice reform and fentanyl crisis mitigation, building on Governor-elect Stein's legacy.
- **Oregon:** Dan Rayfield (D), the former state House speaker, won the open AG seat. Rayfield's legislative experience positions him to be a strong policy advocate, with ongoing emphasis on consumer protection and public safety.
- **Pennsylvania:** Dave Sunday (R), a seasoned prosecutor, was elected AG. Sunday is expected to prioritize public safety, addressing drug and human trafficking, and protecting senior citizens. His prosecutorial background will influence these efforts.
- **Utah:** Derek Brown (R), with experience in constitutional law and legislative leadership, was elected AG after Sean Reyes chose not to seek another term. Brown is anticipated to be a policy leader, focusing on constitutional law and state policy.
- **Washington:** Nick Brown (D), with a robust background in public service, succeeds Bob Ferguson, who was also elected governor. Brown is expected to continue Ferguson's advocacy efforts, with a focus on civil rights and gun violence prevention.

- **West Virginia:** "J.B." McCuskey (R), the current state auditor, will succeed Patrick Morrisey, who won the governor's race. McCuskey is expected to focus on energy independence, job creation, and consumer protection. McCuskey is likely to continue the state's leadership on opioid litigation while emphasizing energy independence and economic development.

These new leaders bring diverse backgrounds and priorities, signaling significant shifts in state-level regulatory and enforcement approaches.

STATE AGs WHO WON GUBERNATORIAL RACES

2024 also saw three sitting AGs elected as governors, marking a notable trend:

- **North Carolina:** Governor-elect Josh Stein (D)
- **West Virginia:** Governor-elect Patrick Morrisey (R)
- **Washington:** Governor-elect Bob Ferguson (D)

NATIONAL LEADERSHIP UPDATES FOR AG ORGANIZATIONS

As the new AGs take office, leadership within the primary AG organizations will also see transitions:

National Association of Attorneys General (NAAG):

- **President:** AG John Formella, New Hampshire
- **President-Elect:** AG William Tong, Connecticut

Attorney General Alliance (AGA):

- **Chairman:** AG Treg Taylor, Alaska

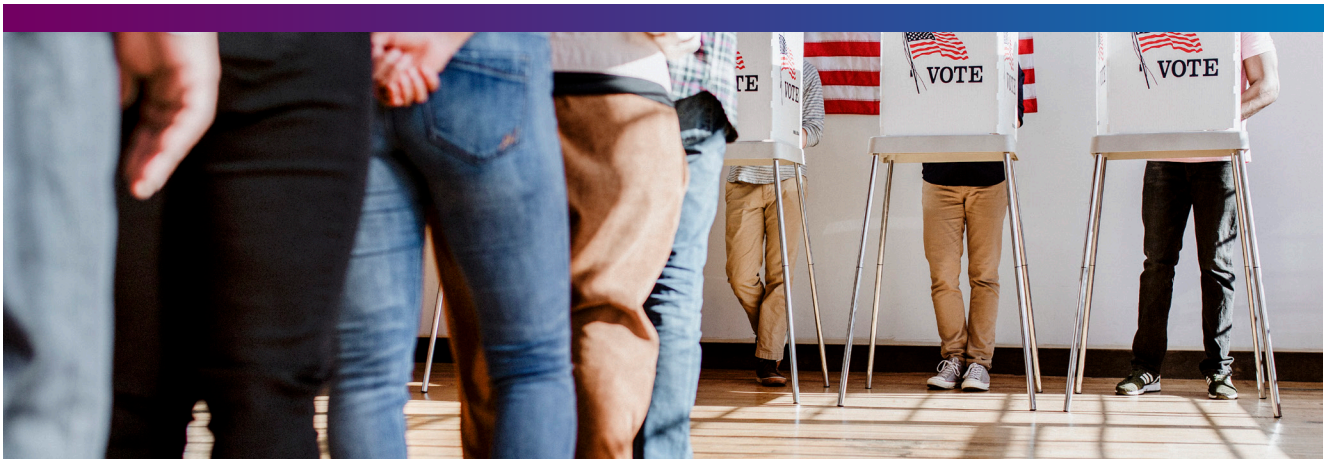
Democratic Attorneys General Association (DAGA):

- **Co-Chair:** AG Kathy Jennings, Delaware
- **Co-Chair:** AG Kwame Raoul, Illinois
- **Vice Chair:** AG Keith Ellison, Minnesota
- **Executive Committee:**
  - AG Rob Bonta, California
  - AG Andrea Campbell, Massachusetts
  - AG Charity Clark, Vermont
- **Chair Emeritus:** AG Aaron Ford, Nevada

Republican Attorneys General Association (RAGA):

- **Chairman:** AG Kris Kobach, Kansas
- **Vice Chairman:** AG Alan Wilson, South Carolina
- **Executive Committee:**
  - AG Steve Marshall, Alabama
  - AG Ashley Moody, Florida
  - AG Todd Rokita, Indiana
  - AG Brenna Bird, Iowa
  - AG Lynn Fitch, Mississippi
  - AG Austin Knudsen, Montana
  - AG Mike Hilgers, Nebraska
  - AG Jonathan Skrmetti, Tennessee – Policy Chairman

The dynamic relationship between state AGs and federal agencies will continue to evolve as new leaders take office, shaping the regulatory landscape heading into 2025 and beyond.



Antitrust

In 2024, state AGs continued to ramp up antitrust enforcement efforts, which has been seen through an increase in attorney head count, complex antitrust litigation, and offices pursuing their own enforcement priorities separate from the Federal Trade Commission (FTC) or the Department of Justice's (DOJ) Antitrust Division.

HISTORICAL ANTITRUST ENFORCEMENT

State AGs have historically left antitrust enforcement to either the FTC or the DOJ, largely due to the FTC's and DOJ's considerable resources and experience with antitrust enforcement. For example, if the FTC approved a proposed merger or failed to move to block a merger, an AG could then file a lawsuit if they believe competition is being restrained uniquely within the state's borders. Similarly, a state AG's office would join an existing lawsuit filed by the FTC or DOJ as a way of taking an interest in the outcome while letting the federal government take the lead. This generally reactive strategy was due in large part to state AGs previously having limited resources dedicated to antitrust enforcement.

The paradigm began to shift several years ago after a perception that antitrust enforcement at the federal level would wane under the first Trump administration. As a result, state AGs have poured resources into developing their own antitrust experience and expertise to fill in any gaps left by a lack of federal antitrust enforcement. The Multistate Antitrust Task Force, made up of antitrust attorneys in AGs' offices across the U.S., has also played a more defining coordinating role.

STATE AG OFFICES BOLSTERING THEIR RANKS

The New Jersey and California AG **offices** have bolstered their ranks to support an enhanced focus on antitrust enforcement. Earlier this year, New Jersey AG Matthew Platkin announced the creation of an Antitrust Litigation and Competition Enforcement Section that is dedicated to enforcing the New Jersey Antitrust Act. Similarly, California DOJ released a plan to strengthen criminal antitrust prosecutions, and committed to hiring at least eight new antitrust attorneys. It is only a matter of time before other state AGs follow their lead.

STATE AGs TAKING THEIR OWN APPROACHES

In early 2024, Washington and Colorado separately initiated lawsuits to block Kroger's acquisition of Albertsons, which would have been a $25 billion deal and created one of the largest grocery store chains in the U.S. These suits alleged that the merger would violate

Washington's Consumer Protection Act and Colorado's State Antitrust Act, respectively. A few weeks after these lawsuits, the FTC, joined by a **coalition** of nine other state AGs, also sued Kroger, seeking a preliminary injunction to halt the merger. In addition to these 11 states, four state AGs have taken different approaches and have spoken out in **opposition** to the injunction requested by the FTC and states. The state AGs from Alabama, Georgia, Iowa, and Ohio sought leave from the U.S. District Court for the District of Oregon to file an amicus curiae brief to oppose the injunction.

On December 10, 2024, two courts issued preliminary injunctions blocking the merger between the two grocery store chains — with the first of such rulings coming out of Washington State court arising from the Washington AG's lawsuit. The second ruling by the U.S. District Court for the District of Oregon granted the FTC's and state AG's joint request for a preliminary injunction.

Additionally, in January 2024, the National Collegiate Athletics Association (NCAA) also became the subject of allegations of antitrust violations by the Tennessee and Virginia AG offices. The states alleged that the NCAA violated the Sherman Antitrust Act by instituting restrictions on current and future student-athletes using their name, image, and likeness (NIL) for their benefit. This comes after the U.S. Supreme Court decided *NCAA v. Alston* in 2021, holding that the Sherman Act applies to the NCAA's amateurism rules. This decision sparked legal pressure from multiple different sources, including a multistate coalition of AGs and the DOJ's Antitrust Division.

The Tennessee and Virginia AG case against the NCAA resulted in a preliminary **injunction** against the NCAA'S "NIL-recruiting ban" in late February. Since this preliminary injunction, AGs from the District of Columbia, Florida, and New York have joined the suit.

The NCAA was again under close scrutiny as a coalition of 11 state AGs reached a proposed settlement on the NCAA's transfer eligibility rule. This transfer eligibility rule mandated that athletes take a one-year break from their sport after transferring schools. Although this only applied to athletes transferring for the second time or more, the state AGs collectively argued that it prevented the athletes from demonstrating their talents. This proposed joint settlement agreement would require the NCAA to cease limiting a student-athlete's ability to transfer schools and prohibit the association from instituting any similar restrictions moving forward.

Artificial Intelligence

As artificial intelligence (AI) continues to evolve and integrate into all sectors, state AGs have emerged as pivotal players in shaping the regulatory landscape. 2024 witnessed a significant surge in legislative and enforcement activities aimed at addressing the multifaceted challenges and opportunities presented by AI technologies.

From supporting new laws and forming task forces to litigating deceptive practices and issuing consumer advisories, state AGs have taken a proactive stance in ensuring that the development and deployment of AI solutions align with public interest and comply with existing legal obligations.

In particular, the AGs' efforts to date demonstrate their highest priorities: (1) data privacy; (2) misrepresentations regarding AI systems; (3) transparency surrounding the use of AI; (4) accuracy of AI-generated data and information; (5) discrimination; and (6) other outputs with potential to cause harms. Overall, these activities foreshadow a flurry of regulatory activity in the coming year, emphasizing the need for vigilance and proactive compliance in the rapidly evolving AI landscape.

LEGISLATION

In the 2024 legislative session, AI continued to be the subject of an ever-increasing number of legislative items. Indeed, at least 45 states, Puerto Rico, the Virgin Islands, and Washington, D.C., introduced nearly 700 AI-related bills — an increase from the almost 200 pieces of legislation introduced in states in 2023. Out of the 45 states introducing AI-related legislation, 31 states, Puerto Rico, and the Virgin Islands, all adopted resolutions or enacted legislation related to AI. While most of the bills introduced were unsuccessful, the enacted bills show that states have mobilized significant resources to study AI and its potential impacts. Select states are also beginning to regulate specific uses. As states continue to gather information regarding the technology, we expect that in 2025, states will shift from information gathering toward comprehensive regulation in the next few legislative sessions.

AI-Related Task Forces and Studies

In 2024, most of the state-level AI-related legislative items concerned the creation of AI task forces and the commissioning of studies. For example, an Indiana bill created the Artificial Intelligence Task Force, which comprises state legislators, academic professionals, legal experts, and industry representatives. The bill

directs the task force to study AI technology developed, used, or considered for use by state agencies as well as the recommendations made by similar groups in other states regarding the benefits, risks, and effects of such AI technology on the rights and interests of Indiana residents.

Similarly, Pennsylvania passed a resolution directing the Pennsylvania Joint State Government Commission to establish an advisory committee to conduct a study on AI and its impacts in Pennsylvania. In addition, the resolution instructs the advisory committee to make recommendations on the responsible growth of Pennsylvania's emerging technology markets and the use of AI in state government.

AI-Related Skills and Funding

Another popular legislative item relates to the creation of programs to develop AI skills or knowledge and funding for AI programs or studies. Typically, these bills enabled the investment of resources into development of AI curriculums, created funding for AI-related programs and studies, or regulated the government's use of AI technology. One example of such a bill from New Jersey makes appropriations for AI career and technical education expansion, AI innovation in education grants, and the AI Innovation Challenge.

Elections

The most popular legislative items enacted across states related to the use of AI in elections. Colorado, Florida, New Hampshire, New Mexico, Oregon, Utah, and Wisconsin, all passed legislation regulating the use of AI in developing campaign materials. For example, in May 2024, the Colorado legislature enacted a law that prohibits the distribution, dissemination, publication, broadcasting, transmission, or display of a communication concerning a candidate for elective office that includes a deepfake, to an audience including members of the electorate for the office the candidate seeks to represent. The act defines "deepfake" as an image, a video, an audio, or multimedia AI-generated content that falsely appears to be authentic or truthful, and which features a depiction of an individual appearing to say or do something the individual did not say or do.

Private Sector Uses of AI

While several states enacted legislation regulating specific AI uses (such as its use in labor and employment), only a few states enacted broad regulations on AI use.

One successfully broad bill regulating the use of AI more generally is the Colorado Artificial Intelligence Act. The act regulates "developers" (*i.e.*, entities or individuals who create or substantially modify AI systems) and "deployers" (*i.e.*, entities or individuals who use AI systems to make decisions or assist in decision-making) who develop or deploy "high-risk" AI systems. Under the act, an AI system is considered high-risk if it "makes, or is a substantial factor in making, a consequential decision." In turn, a "consequential decision" is considered a decision that can significantly impact an individual's legal or economic interests, such as decisions related to employment, housing, credit, and insurance.

The legislative impetus for the act is the concern that consequential decisions, when influenced or driven by AI systems, can potentially lead to algorithmic discrimination. Accordingly, the act imposes various documentation, disclosure, and compliance obligations on developers and deployers that are intended to identify and prevent such discrimination.

Similarly, Utah legislators enacted the Artificial Intelligence Policy Act, which imposes certain disclosure requirements on entities using generative AI tools with their customers, and limits an entity's ability to "blame" generative AI for statements or acts that constitute consumer protection violations.

Under the law, companies operating in "regulated occupations" (those requiring a license or state certification) are required to clearly disclose to consumers that they are interacting with generative AI, or reviewing content created by generative AI, at the start of any communication. This disclosure must be made verbally before any oral interaction and through electronic messaging before any written exchanges. Companies outside of regulated occupations but subject to Utah consumer protection laws are required to clearly and

conspicuously disclose the use of generative AI if asked or prompted by a consumer. Additionally, the law prevents a company that violates a Utah consumer protection law from defending itself by claiming that the generative AI tool was responsible for the violative statement or action or was used in furtherance of the violation.

In contrast, similar legislative efforts to regulate the private use of AI failed in some states. For instance, a California bill (one of the more contentious AI-related bills) sought to regulate the extreme risks associated with AI development. The bill would have required the most powerful AI models to undergo safety testing before public release, held tech companies legally accountable for harms caused by AI models, and mandated "kill switches" for AI technology in case of misuse or autonomy. The bill would have also required stringent cybersecurity measures and granted the California AG exclusive jurisdiction to sue AI developers if their models caused severe harm.

California's bill created a divide among tech industry leaders and legislators, with AI developers like Elon Musk and former tech company officers cautiously supporting the bill, while AI researchers and Bay Area Congressional Democrats urged the governor to veto it. Supporters argued that the bill proactively addressed potential large-scale harms caused by AI and was limited to large AI models. Critics, however, contended that the bill was premature, overlooked existing AI-related issues such as deepfakes and misinformation, and would have stifled innovation. Ultimately, California Governor Gavin Newsom vetoed the bill, stating that it overly focused on the largest AI models, while smaller models could pose similar dangers.

BIPARTISAN LETTERS

In 2024, state AGs sent bipartisan letters to federal agencies advocating for responsible regulation and transparency in the development and control of AI technology, as well as warning letters to entities that abused the technology. These letters addressed critical topics, including the need for clear AI oversight, the implementation of federal initiatives like the Biden administration's Executive Order on AI, and collaborative efforts to combat illegal robocalls.

The Use of AI in Telemarketing

A bipartisan group of 26 state AGs submitted a letter to the Federal Communications Commission (FCC) highlighting concerns about the implications of AI technologies in the context of the Telephone Consumer Protection Act (TCPA). The letter responded to the FCC's Notice of Inquiry, which sought information about AI's potential to either mitigate or exacerbate unwanted robocalls and robotexts. The AGs commended the FCC's ongoing efforts to protect consumers and expressed a strong commitment to collaborative work with federal partners and the telecommunications industry to tackle bad actors.

The letter underscored significant concerns about AI technologies enabling more sophisticated and widespread delivery of unsolicited robocalls. In the letter, AGs also asserted that exemptions for AI systems that simulate live agent interactions from TCPA restrictions should not be granted, and urged the FCC to classify any AI-generated voice as "artificial" under the TCPA. The AGs highlighted the necessity for clear regulatory guidance to prevent misuse of AI by entities attempting to bypass consent

requirements, emphasizing consumer protection as a paramount goal. Shortly after the AGs sent the letter, the FCC announced a declaratory ruling stating that calls made with AI-generated voices are artificial under the TCPA.

Anti-Robocall Multistate Litigation Task Force Notice

The Anti-Robocall Multistate Litigation Task Force, a working group of 51 AGs who combat illegal robocall traffic, issued a formal notice to Life Corporation about illegal robocalls during the New Hampshire presidential primary election. The letter addressed Life Corp's suspected involvement in originating robocalls that disseminated false information likely intended to deter voters. The AGs warned that Life Corp's actions may violate federal laws such as the TCPA and the Truth in Caller ID Act, as well as state consumer protection statutes. They urged Life Corp to cease transmitting illegal call traffic immediately and cautioned that continued violations could result in enforcement actions, including civil penalties and injunctions.

Executive Order on AI

In February 2024, 20 state AGs sent a comment letter to the National Institute of Standards and Technology (NIST) that critiqued the Biden administration's Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence, arguing it oversteps constitutional and statutory boundaries. The letter expresses concerns about the executive order's aim to centralize governmental control over AI development through reporting requirements and standards for risk management and testing. The AGs argued this approach lacks congressional authorization, with the Defense Production Act cited in the order being insufficient to justify such sweeping regulatory oversight. They caution that this framework could stifle innovation, entrench dominant tech players, and increase regulatory barriers for emerging businesses.

Additionally, the AGs highlighted risks of political bias and censorship should the federal government have the power to influence AI models under the guise of combating disinformation or ensuring democratic integrity. The AGs call for a constitutionally grounded, bipartisan approach to AI governance that balances innovation and accountability without overreaching executive authority.

CONSUMER ADVISORIES AND REPORTS

Through consumer advisories and reports, state AGs have provided practical guidance and information on the implications and impacts of AI under existing laws, ranging from election misinformation to consumer protection and data privacy issues. These materials highlight emerging regulatory issues and offer recommendations for businesses and private equity investors to ensure compliance and ethical AI use.

Advisory Regarding AI and Deepfakes

In September 2024, Colorado AG Phil Weiser issued a public advisory alerting voters and political stakeholders to the risks posed by deepfake technology in the context of election-related communications. This advisory was issued in response to a pioneering law designed to combat the spread of AI-generated multimedia content — commonly known as deepfakes — that misrepresent candidates for elected office. The law mandates clear and conspicuous disclosures for any such manipulated content to promote transparency. Violations of this statute can result in legal action, substantial financial penalties, and, in some cases, criminal liability.

The advisory emphasized that all persons or entities involved in creating or distributing election-related multimedia content — including corporations, political committees, and other groups — must comply with the law. Specifically, disclosures must meet stringent requirements, such as font size parity with other text in visual content and clear articulation in audio content. The prohibition on undisclosed deepfake communications applies during critical election periods: 60 days before a primary and 90 days before a general election.

Massachusetts AG's Advisory

Massachusetts AG Andrea Joy Campbell issued a comprehensive advisory in April 2024, clarifying the applicability of existing consumer protection, anti-discrimination, and data security laws to AI technologies. The advisory underscored Massachusetts' existing legal framework and warned stakeholders against unfair or deceptive practices in the development, marketing, and use of AI under the Massachusetts Consumer Protection Act. These include misrepresenting AI systems' quality, reliability, or safety; supplying defective systems; or failing

to comply with laws that safeguard public health, safety, or welfare.

Minnesota and New York Issue AI Reports

In addition to drafting comment letters, several state AGs issued reports regarding the impacts of AI, signaling a shift from the "information-gathering" stage toward enforcement. In February, Minnesota AG Keith Ellison released a report concerning the impact of social media and AI on young people. The report made certain recommendations to Minnesota lawmakers about the regulation of AI, such as "mandating transparency about product experimentation" to "help society play a meaningful role in AI model development." The report noted that "[t]he Minnesota AG's Office, along with other state AGs, has been seriously concerned about the impact of AI on children, specifically identifying the risks of revealing private information and enabling 'deepfakes' of children's voices and images, including in sexualized contexts."

Moreover, in August 2024, New York AG Letitia James also issued a report on the potential benefits and risks associated with AI, particularly generative AI, as the technology rapidly advances and becomes more embedded in New Yorkers' daily lives. The report followed a symposium, The Next Decade of Generative AI: Fostering Opportunities While Regulating Risks, organized by AG James in April. The symposium brought together the AG's office, academics, policymakers, advocates, and industry representatives, with the goal of developing strategies to mitigate risks presented by developing AI technology while ensuring New York remains at the forefront of innovation. Topics discussed at the symposium included addressing information and misinformation sharing, data privacy, automated decision-making, and potential health care uses for AI.

Consumer Financial Services

In 2024, state AGs continued to devote significant time and resources to enforcing state consumer protection laws. Much of the state AG activity in the consumer financial services space aligned with related federal priorities, including junk fees, debt collection, and newer financial services such as solar lending. States have been more active in certain areas, such as those related to cryptocurrency.

Although the new federal administration's enforcement priorities are unknown, we expect that federal oversight and enforcement will generally decrease. As a result, states may feel the need to step into the void left by federal regulators in the financial services space over the next four years.

SOLAR INDUSTRY

In August, the U.S. Department of Treasury, FTC, and Consumer Financial Protection Bureau (CFPB) **announced** a new interagency initiative directed at addressing anticompetitive, unfair, and deceptive practices related to the sale and financing of residential solar energy systems. The federal regulators stated that they would work with state AGs and state financial regulators to curtail improper conduct in the solar industry and highlighted successful partnerships with states to investigate misconduct in the industry. Consumer education aimed at helping consumers recognize the difference between legitimate and illegitimate providers is also a priority for federal regulators.

In October, the Connecticut AG announced a $5 million settlement against bankrupt solar installation firm Vision Solar, LLC, to resolve allegations of unfair trade practices. In March 2023, the AG announced that it was bringing an enforcement action against the company for allegedly violating state consumer protection laws by engaging in sales techniques that targeted vulnerable individuals, installing rooftop systems without permits or necessary licensing, and failing to install functional solar energy systems. Arizona and Florida AGs filed similar suits, and the company subsequently filed for Chapter 7 bankruptcy. In addition to the $5 million civil penalty, the company also agreed to make certain changes to its business practices. However, these changes are largely theoretical. Solar energy industry participants, including those providing financing for such systems, should expect continued oversight regarding their business practices, as Connecticut is just one of many states paying close attention to the solar industry.

DEBT SETTLEMENT

On October 1, 2024, notable provisions of the **Minnesota Debt Fairness Act** took effect, a law strongly endorsed by the Minnesota AG. Among other things, the act proscribes the automatic transfer of medical debt to a patient's spouse or from being reported to consumer reporting agencies. In addition, the law protects the last $4,000 in an individual's bank account from being subject to collections, and caps garnishment levels based on income. The new provisions generally align with other state laws attempting to minimize the impact and collectability of consumer medical debt.

In October, the Minnesota AG entered into a **settlement** with Financial Solutions Group and Accelerated Debt Settlement, two debt settlement companies, to resolve allegations that they violated Minnesota consumer protection laws. The companies were accused of promising to negotiate debt settlements with creditors but collected fees before performing any services, misrepresented their services, or created consumer confusion regarding their services, and operated without the required registration. Under the terms of the settlement, the companies are enjoined from conducting any debt settlement activities in Minnesota without the proper registration, and must pay approximately $1 million in consumer restitution. The settlement also includes approximately $580,000 in civil penalties that are suspended unless and until the companies violate the terms.

REGULATION UPDATES

In May, Connecticut **passed a law** that expanded the authority of the state's AG to enforce certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). While Connecticut law already allows the AG to file civil actions to enforce Dodd-Frank, the new law gives the AG subpoena authority over both in- and out-of-state banks when it comes to the enforcement of Dodd-Frank, without the AG having to seek approval from the state's Department of Banking. Many state AGs already possess this independent subpoena power.

In June, the California AG, along with a coalition of other state AGs, submitted a letter to the CFPB in support of the CFPB's proposed rule to establish a registry of nonbank financial services entities that have entered into federal, state, or local enforcement orders. According to the CFPB, the registry is necessary due to the lack of a comprehensive tracking system for enforcement actions against nonbank entities and inconsistent licensing and oversight of nonbank entities, and will help law enforcement agencies across the U.S. identify repeat offenders and recidivism trends. The AGs agreed with the CFPB's position. The final rule became effective in September, and the CFPB's registry went live in October. We expect that the registry will lead to additional scrutiny, regulatory inquiries, and consumer litigation against companies that have entered into enforcement orders with regulators in the past, and will also provide companies with more incentive to litigate regulatory actions as opposed to settling, which would obligate the company to register with the CFPB under the new rule.

In September, **13 state AGs**, along with the AG for the District of Columbia, joined Colorado in its appeal to the Tenth Circuit of a Colorado federal court decision pausing the enforcement of a Colorado law addressing loans made by out-of-state, state-chartered banks. The suit began in March 2024 when three trade groups sued Colorado to enjoin the state law, which limits certain charges on consumer loans and opts Colorado out of the Depository Institutions Deregulation and Monetary Control Act — a statute that allows state-chartered banks to contract for the interest rate permitted by the state where the bank is located and export that interest rate into other states. Colorado's attempt to opt out of the act is based on language permitting states to opt out with respect to loans "made" in the opt-out state. The court, however, agreed with the trade groups and held that a loan is made in the state where the lender, rather than the borrower, is located. This case is the first to address where a loan is made according to the act's opt-out provision. A successful appeal will significantly strengthen the power of states to regulate interest rate and fee caps, forcing lenders to adjust their rates based on the borrower's residency.

OTHER STATE ENFORCEMENT ACTIONS

In January, the Massachusetts AG **announced** a $1.8 million settlement with Nelnet, Inc., one of the nation's largest federal student loan servicers, regarding alleged violations of income-driven repayment (IDR) plan notice requirements. The AG's investigation revealed that between 2013 and 2017, Nelnet failed to provide borrowers with proper notices about renewing their IDR plans and, in some instances, failed to send required notices altogether, violating both federal regulations and state consumer protection laws. Under the settlement terms, Nelnet agreed to pay $1 million to the Commonwealth's General Fund and $800,000 to the Student Loan Trust Fund. The company also committed to specific business practice changes for Massachusetts borrowers, including enhanced compliance with notice requirements and three-year retention of IDR plan communications. This enforcement action, which continues the state's focus on student debt relief and loan servicing reform under AG Andrea Campbell, serves as a reminder that loan servicers must maintain robust compliance programs regarding borrower communications and notice obligations, particularly as both state and federal regulators increase their scrutiny of student loan servicing practices.

In February, the New York AG secured a $77 million judgment against three merchant cash advance companies — Richmond Capital Group, Ram Capital Funding, and Viceroy Capital Funding — and their principals, following a September 2023 New York Supreme Court ruling. The case, initially filed in 2020, alleged that the companies engaged in exploitative lending practices targeting small businesses, including charging excessive interest rates, imposing undisclosed fees, debiting excess amounts, and fraudulently obtaining judgments. Under the terms of the judgment, the companies must cease all collections on outstanding debt, rescind all loan documents, terminate related liens and security interests, and provide restitution to affected businesses. While the defendants argued that a portion of the funds sought represented principal rather than interest, the court found they failed to provide evidence supporting this claim, though it left open the possibility for the defendants to move to amend the judgment if they could establish otherwise. This enforcement action represents a significant victory for state regulators in business-to-business transactions.

In June, the New York AG **filed a complaint** against several entities involved in the crypto industry, alleging that they orchestrated two consecutive and fraudulent cryptocurrency schemes. The complaint alleged that the defendants' actions defrauded investors of tens of millions of dollars by falsely promising large returns via group chats and social media ads targeted at Haitian nationals. This action highlights the regulation-by-enforcement nature of the crypto industry and demonstrates the need for comprehensive and consistent regulation that will weed out bad actors while also providing clear guidance to others in the industry. In the absence of such regulations, state AGs and other regulators will attempt to regulate cryptocurrency under general state business laws.

In October, the New Jersey AG and the state's Division on Civil Rights **released a report** that detailed the findings of a multiyear investigation into Republic First Bank (Republic) and its alleged mortgage redlining practices. According to the report, Republic engaged in redlining against Black, Hispanic, and Asian communities in New Jersey. Republic entered the residential mortgage lending business in 2016 but was closed by the Pennsylvania Department of Banking and Securities in April 2024 due to the bank's "unsafe and unsound condition." In August 2024, New Jersey filed a claim against Republic with the Federal Deposit Insurance Corporation (which has assumed most of Republic's liabilities) to obtain monetary relief for New Jersey residents. The AG's report demonstrates that redlining continues to be an enforcement priority at all levels of government.

Environmental + Energy

Regulating a state's environmental issues, which tend to overlap significantly with the energy industry, often falls within the purview of the state AG. In 2024, state AGs advanced causes relating to various regulatory and litigation initiatives in the environmental and energy sectors, including emissions and electric vehicles, plastics, and pollution.

EMISSIONS AND ELECTRIC VEHICLES

State and federal regulators continued efforts to refine regulations relating to vehicle emissions, with various AGs staking out positions on whether to support or challenge environmental regulations related to emissions and EVs.

As background, the Environmental Protection Agency (EPA) took significant regulatory action in 2024, including putting in place multipollutant emissions standards for various light-duty and medium-duty vehicles, implementing stronger standards to reduce greenhouse gas emissions for heavy-duty vehicles, and imposing rules to reduce pollution from fossil fuel-fired power plants.

Several states then filed legal challenges against the new standards. In May, for example, a coalition of 24 Republican AGs filed a **lawsuit** against the EPA to block a rule requiring existing coal-fired and new gas-fired power plants to reduce their greenhouse gas emissions by 90% by 2032. The coalition, led by West Virginia AG Patrick Morrisey, asserted that the rule exceeds the EPA's authority under the Clean Air Act and was arbitrary, capricious, an abuse of discretion, and not in accordance with the law, particularly in light of the Supreme Court's 2022 decision in *West Virginia v. EPA*. The states opposing the regulations also argued that it would undermine traditional energy providers and infringe upon the rights of states to manage their own energy resources. Conversely, supporters of the rule argued that the emissions reductions are achievable with the implementation of carbon capture and sequestration (CCS) technologies and are essential to achieving national and global emissions goals.

Republican AGs brought a similar legal challenge against the EPA's new standards for heavy-duty vehicles, which aim to reduce emissions from vehicles such as freight trucks and buses. A coalition of Democratic AGs from 22 states and the District of Columbia filed a **motion** to intervene in support of the rule, asserting that if the standards were vacated, harmful emissions will increase,

thereby worsening climate change and public health issues due to the longevity of greenhouse gases.

Similar legal battles erupted over state regulations. In a lawsuit in the U.S. District Court for the Eastern District of California, for example, 17 states and the Nebraska Trucking Association **aimed** to block California's Advanced Clean Fleets regulations, which require certain trucking fleets to transition to electric trucks regardless of their headquarters location. The lawsuits claim these mandates exceed the constitutional and statutory authority of the federal government and California regulators.

State AGs also continue to enforce consumer protection statutes in the environmental space. In August, for example, Arizona AG Kris Mayes filed a **lawsuit** against FCA (formerly Fiat Chrysler) and Cummins, alleging violations of the Arizona Consumer Fraud Act. The lawsuit claims that these companies falsely advertised certain vehicles as "clean diesel" while they allegedly contained illegal emissions defeat devices. These devices allowed the vehicles to pass EPA emissions tests but emit higher pollutants during normal operation, misleading consumers into paying a premium for environmentally friendly vehicles.

The outcomes of these lawsuits, and others like them, are likely to significantly affect the energy and transportation sectors. Moreover, these legal battles highlight the conflict between states' rights and federal authority in environmental regulation, which we expect will only continue to grow over the course of the next several years.

PLASTICS AND PFAS

2024 also saw a flurry of state and federal actions addressing materials containing plastics and so-called forever chemicals, per- and poly-fluoroalkyl substances (PFAS).

In June, California issued **petitions** to enforce subpoenas against the Plastics Industry Association (PLASTICS), a lobbying group, and the American Chemistry Council, a trade association connected with the plastics industry, seeking documents related to the feasibility of plastic recyclability and a trade association-funded study. Both organizations filed lawsuits claiming the subpoenas violated their First Amendment rights, arguing that the subpoenas undermined their ability to engage in open discourse, share information, and develop public policy positions, compromising their ability to function effectively.

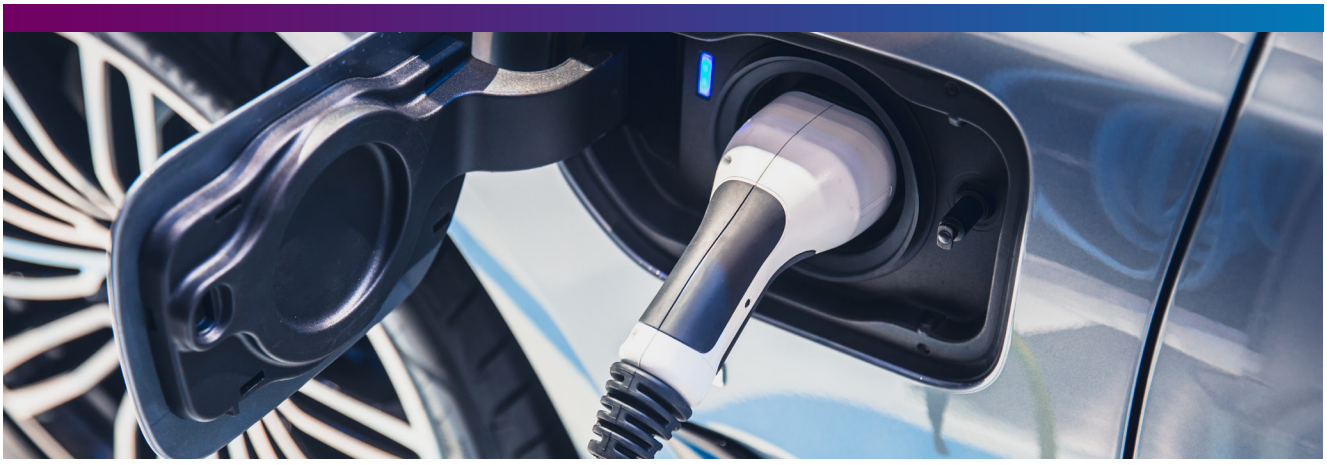
Other states also supported additional intervention and controls related to plastics use, with 11 state AGs signing onto a **letter** in March supporting a proposed amendment from the U.S. General Service Administration (GSA) that would reduce single-use plastic packaging in federal procurements. In the letter, the AGs suggested expanding the rule to address all single-use plastic products that the federal government procures. Furthermore, the AGs asked the GSA to require federal agencies to publicly report their consumption of single-use plastic and nonrecyclable paper products in an effort to increase transparency. Beyond federal procurement, such measures could start to take hold at the state level as well, such that contractors might be expected to implement changes in manufacturing or supply chains.

At the federal level, in April 2024, the EPA took several actions relating to PFAS, including: (1) finalizing a rule designating two widely used PFAS as hazardous substances; (2) issuing a drinking water standard to limit exposure to PFAS; (3) updating interim guidance on the destruction and disposal of materials containing PFAS; and (4) directing government contractors to use cleaning products that do not include PFAS. While not immediately challenged by the states, the regulation of PFAS is certain to be an area of interest going forward, with more changes likely to come. In the meantime, state AG litigation addressing PFAS at the state level continued to proliferate, with significant developments in a long-running lawsuit against manufacturers such as 3M, DuPont, Chemours, and Corteva over their use of PFAS in a wide range of consumer products and firefighting foams and new lawsuits filed against those same manufacturers. Any decrease in federal regulation may well be addressed by continued action by the states to further develop jurisprudence and regulation in this area.

POLLUTION

State AGs also stepped up efforts to enforce existing regulations, particularly at the state level, that relate to general pollution of the air, water, and other surroundings.

For example, Wisconsin settled with a global food supply company in July to resolve claims that the company's liquid smoke manufacturing facility emitted various pollutants into the air without the necessary permits. The state highlighted its commitment to keeping the air clean through proactive enforcement of its regulations, a position that could be repeated across other states. Another settlement out of Massachusetts in May resolved claims by the state AG relating to wastewater discharges from a lime quarry that allegedly violated both the federal Clean Water Act and the state's wetland, clean water, and endangered species laws. And in March, the Ohio AG asked a state court to enforce regulations against a waste management company that was allegedly failing to abide by its permits. Collectively, these actions demonstrate the ongoing efforts of various states to proactively enforce state (and occasionally federal) regulations in the face of potential and actual pollutants.



Marketing + Advertising

In 2024, significant regulatory developments were introduced to enhance consumer protection in subscription and renewal practices. Both federal and state regulators advanced rules addressing negative option practices and junk fees, requiring businesses to adapt their compliance strategies. These changes reflect a broader effort to ensure transparency and fairness in how companies interact with consumers.

NEGATIVE OPTION REGULATORY UPDATES

This year, both federal and state regulators advanced rules related to negative option practices. Negative options come in a variety of forms, but at its core, a negative option is a commercial practice where a consumer's silence or failure to take affirmative action is seen as acceptance. For example, negative options might include product-of-the-month clubs, magazine subscriptions, or free trial offers that convert to payment.

Significantly, in October, the FTC announced its final "click-to-cancel" rule. The rule requires virtually all companies offering negative option programs to have simplified cancelation methods. Furthermore, the law requires companies to provide a simple mechanism that is "at least as easy to use as the mechanism the consumer used to consent to the Negative Option Feature." Most importantly, the law requires companies to separately obtain a consumer's affirmative consent to the negative option feature.

The FTC's rule came on the heels of California's recently amended automatic renewal law. California's **updated law** amended existing regulations on automatic renewal offers and continuous service offers made to California consumers. Under the updated law, a business must obtain the consumer's "express affirmative consent" to the automatic renewal or continuous service terms. Like the FTC's regulation, California's rule included expansions regarding how a customer may cancel their automatic renewal or continuous service and a new required notice. The ability to cancel must be available in the same medium used for the transaction or the medium in which the consumer is accustomed to interacting with the business. This may include, but is not limited to, in person, by telephone, by mail, or by email. Moreover, existing law requires that consumers who purchased the product or service online must be able to cancel electronically.

Whereas the FTC's rule chose not to address requirements for customer notices, California's updated law requires a new annual notice. The notice must

identify the applicable product or service, the frequency and amount of the charges, and the means to cancel. This is in addition to the requirement to send consumers notices regarding the end of a promotional pricing and if material changes occur to the terms and conditions.

These rules mark a significant shift in compliance obligations that will require businesses to restructure several of their practices. Additionally, regulators now have even more tools at their disposal to regulate businesses and how they interact with consumers.

REGULATION OF JUNK FEES

Many federal and state agencies have targeted so-called "junk fees," a term that has been used to encompass processing fees, convenience charges, or any other fees companies charge but allegedly fail to include in their advertisements or fail to properly disclose to consumers.

Federal agencies such as the FTC and CFPB have made **efforts** to combat junk fees, with the CFPB finalizing a rule in March that lowered the cap on credit card late fees from $32 to $8. The FTC first announced a proposed rule last year to ban junk fees, and an informal hearing was held on April 24, 2024. While the **proposed rule** contemplated a comprehensive federal regulation that addressed junk fees nationwide, the FTC has closed out the year with the December 17 announcement that the final rule would address junk fees for live-event tickets and short-term lodging. According to the FTC, the Trade Regulation Rule on Unfair or Deceptive Fees targets "bait-and-switch pricing and other tactics used to hide total price and bury junk fees in the live-event ticketing and short-term lodging industries." The FTC's final rule does not prohibit any type or amount of fee or any specific pricing strategies, but imposes requirements on how the total price, inclusive of all mandatory fees, is presented. The final rule will become effective 120 days after its publication in the Federal Register.

While the FTC now joins the CFPB in promulgating industry-specific rules, there is still no comprehensive federal rule addressing junk fees. However, several states have taken steps to regulate junk fees through legislation. Most recently, California amended the California Consumers Legal Remedies Act to prohibit "advertising, displaying, or offering a price for a good or service that does not incorporate all mandatory fees or charges."

Similarly, Minnesota's law, which took effect on January 1, requires a company's advertised price to include all mandatory fees. Under this law, "mandatory fees" include all fees that must be paid to purchase the good or service, fees that aren't reasonably avoidable, and those that a reasonable person would expect to be included in the advertised price.

To comply with these laws, companies must determine which portions of their product and service offerings are in fact mandatory and need to be included in the advertised price. A helpful barometer is to identify which fees a customer can't reasonably avoid.

The goal remains for regulators to develop a scheme that removes the hurdle of complying with a patchwork of various state and federal laws, which complicates price inclusion. This fragmented approach could harm consumers and backfire on government agencies.

Pharma + Health Sciences

The health care industry remained under significant scrutiny from state AGs across the U.S. in 2024, driven by historical precedents, emerging issues, and evolving legal strategies. These trends are expected to continue and potentially intensify in 2025, with state AGs playing a critical role in shaping the regulatory landscape of the health care sector.

HISTORICAL CONTEXT AND AUTHORITY OF STATE AGs

State AGs have long exercised broad statutory authority under the Unfair and Deceptive Trade Practices Act and state equivalents to the False Claims Act. These statutes allow AGs to seek civil penalties and restitution for conduct deemed deceptive or unfair. Historically, this authority has been applied to heavily regulated industries, including health care, often in response to high-profile criminal prosecutions, congressional investigations, or mass torts. The landmark 1998 Master Settlement Agreement with big tobacco set a precedent for state AGs' involvement in large-scale litigation, often in collaboration with private counsel on a contingency fee basis. This model has since been replicated in the health care industry, with state AGs pursuing multistate actions against pharmaceutical companies and other health care entities.

2024: A YEAR OF HEIGHTENED SCRUTINY

In 2024, state AGs have continued to leverage their broad statutory authority to address pressing issues within the health care industry.

Opioids

One of the most significant areas of focus has been the opioid crisis. Unlike previous enforcement actions that followed federal initiatives, state AGs and municipalities have taken the lead in opioid litigation, filling perceived gaps left by federal agencies. This approach has resulted in a broadening use of enforcement tools, including the use of RICO and public nuisance theories, although these novel legal strategies have faced challenges in court — including the Ohio Supreme Court recently finding that Ohio law does not allow for a public nuisance theory of liability for the sale of opioids. This decision follows a similar ruling by the Oklahoma Supreme Court in 2021, with other courts like the West Virginia Supreme Court also being asked to weigh in on the issue. The health care industry must navigate these complex legal landscapes while continuing to provide essential services.

Drug Pricing

Another major area of scrutiny has been drug pricing. State AGs have targeted pharmaceutical companies and pharmacy benefit managers over allegations of price gouging and unfair competition. High-profile cases, such as those involving insulin pricing, have highlighted the AGs' focus on addressing public concerns about the affordability of medications. Additionally, state legislatures have equipped AGs and regulators like the New York State Department of Financial Services with new transparency laws, requiring manufacturers to report price increases, thereby enabling further investigation and potential enforcement actions. The industry must balance regulatory compliance with the need to innovate and provide life-saving medications.

AI

In what we expect will be a continuing trend, Texas AG Ken Paxton announced a settlement with Pieces Technology earlier this year, marking the first AG settlement involving generative AI. The lawsuit alleged that Pieces Technology made false claims about the accuracy of its AI product used in health care settings. The settlement requires Pieces to provide clear definitions and methodologies for any advertised metrics and prohibits making false or misleading statements about its AI products. Although no monetary penalty was imposed, Pieces must comply with future state demands to demonstrate adherence to the settlement terms.

The settlement with Pieces underscores the importance of assessing a health care company's advertisements. AGs are expected to scrutinize claims made by AI providers, ensuring that their promotional statements are accurate. This focus on AI aligns with broader consumer protection efforts and reflects AGs' interest in regulating new and disruptive technologies. The health care industry must continue to innovate responsibly while adhering to regulatory standards.

Private Equity in Health Care

State AGs have historically scrutinized for-profit health care institutions, such as nursing homes, for potential quality-of-care issues. In 2024, six states introduced legislation mandating pre-acquisition notice for private equity firms acquiring health care companies. These laws, supported by state AGs, aim to prevent anticompetitive effects and ensure health care access. While California's governor vetoed Assembly Bill 3129 — which would have authorized the California AG to veto private equity or hedge fund acquisitions of health care facilities or provider groups — we expect California and other states to continue to press for greater oversight of health care acquisitions during the upcoming legislative calendar.

2025 PREDICTIONS

The health care industry can expect continued scrutiny from state AGs in 2025. Building on the trends of 2024, AGs will leverage their broad statutory authority to address issues such as the opioid crisis, drug pricing, and the impact of new technologies. The involvement of private equity in health care and the evolving political landscape will further shape AGs' enforcement priorities.

For health care entities, staying informed and proactive in compliance efforts will be crucial. Engaging with legal counsel to navigate the complex regulatory environment and anticipating potential areas of scrutiny can help mitigate risks and ensure adherence to evolving standards. As state AGs continue to play a pivotal role in regulating the health care industry, their actions will undoubtedly influence the sector's trajectory in the coming years. The health care industry must remain resilient and adaptive, focusing on innovation and patient care while navigating regulatory challenges.

State AG/ Privacy + Cyber Enforcement

State AGs are the vanguard of consumer privacy enforcement at both the state and national levels. As consumer privacy has evolved into a critical aspect of modern life, state legislatures have increasingly passed comprehensive consumer privacy laws when Congress fails to act. These state laws, which often touch upon privacy as well as cybersecurity, primarily grant enforcement authority to the state AGs. Through enforcement actions and influence, whether political or legal, state AGs undoubtedly shape the regulatory data privacy landscape.

Similar to previous years, legislation and AG enforcement actions made 2024 a landmark year for the privacy and cybersecurity regulatory landscape. The growth of specialized regulatory privacy professionals at all levels of government, and particularly in state AG offices, portend an active 2025 as new privacy laws take effect.

STATE PRIVACY LEGISLATION IN 2024

By the end of 2023, 12 states had enacted comprehensive consumer privacy laws.

STATE	DATE OF ENACTMENT	EFFECTIVE DATE
Virginia	March 2, 2021	January 1, 2023 (in effect)
Colorado	July 7, 2021	July 1, 2023 (in effect)
Utah	March 24, 2022	December 31, 2023 (in effect)
Connecticut	May 10, 2022	July 1, 2023 (in effect)
Iowa	March 29, 2023	January 1, 2025 (in effect)
Indiana	May 1, 2023	January 1, 2026
Tennessee	May 11, 2023	July 1, 2025
Montana	May 19, 2023	October 1, 2024 (in effect)
Florida*	June 6, 2023	July 1, 2024 (in effect)
Texas	July 18, 2023	January 1, 2025 (in effect)
Oregon	July 18, 2023	July 1, 2024 (in effect)
Delaware	Sept. 11, 2023	January 1, 2025 (in effect)

*Florida's law is specific to any business that "[m]akes in excess of $1 billion in global gross annual revenues" and "[d]erives 50 percent or more of its global gross annual revenues from the sale of advertisements online," "[o]perates a consumer smart speaker," or "[o]perates an app store or a digital distribution platform that offers at least 250,000 different software applications.

Seven additional states passed new state-level privacy legislation in 2024, bringing the total number of states with consumer privacy legislation to 19. States that passed new consumer privacy legislation or amended legislation already on the books in 2024 include:

STATE	DATE OF ENACTMENT	EFFECTIVE DATE
New Jersey	January 16, 2024	January 15, 2025
New Hampshire	March 6, 2024	January 1, 2025
Kentucky	April 4, 2024	January 1, 2026
Nebraska	April 17, 2024	January 1, 2025
Maryland	May 9, 2024	October 1, 2025
Virginia*	May 17, 2024	January 1, 2025
Minnesota	May 24, 2024	July 31, 2025
Rhode Island	June 25, 2024	January 1, 2026
California*	6 Amendments	–
Colorado*	3 Amendments	–

* These states have enacted amendments to existing consumer privacy legislation.

As the data privacy legislative framework becomes more robust, state legislatures are embracing approaches that differ in some respects. For example, in 2024, Maryland took a new approach toward data minimization, and Minnesota includes exemptions for small businesses and provides consumers the right to question profiling decisions made by companies. While all these laws share common features giving consumers more control over their personal data, differences will continue to perpetuate as technology evolves along with associated policy concerns.

In addition to omnibus consumer privacy legislation, several privacy-related laws came into effect in 2024. Legislation that imposes new obligations for companies collecting health data came into effect in Washington and Nevada in March, expanding on existing requirements found in the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). In July, AG Brian Schwalb of Washington, D.C., introduced a similar bill aimed at protecting D.C. residents' personal health data by strengthening requirements to be followed by companies handling such data.

Among states with existing consumer privacy laws, several passed amendments to clarify the law or provide additional rights to consumers. The Colorado legislature amended the Colorado Privacy Act to address children's privacy, biometric data, and neutral data used for identification purposes. Virginia amended the Virginia Consumer Data Protection Act to impose additional requirements on how the data of individuals under the age of 13 is handled by data controllers. Governor Newsom signed into law amendments to the California Consumer Privacy Act of 2018 (CCPA) which expand the definition of "sensitive personal information" to include a "consumer's neutral data." The amendments also clarified that "personal information" can exist in several forms, such as physical, digital, or abstract digital formats.

TENSIONS BETWEEN FEDERAL AND STATE REGULATORS EMERGE

The maturation of state-level privacy regulation and the proliferation of state-level privacy specialists gave rise to tension between the states and federal government in 2024. On May 8, AGs from 14 states and the District of Columbia sent a letter to congressional leadership opposing the preemption clause in the proposed federal American Privacy Rights Act (APRA). The AGs argued that APRA would nullify 16 state comprehensive data privacy laws enacted since 2018, undermining the strong privacy protections these states have established. They advocated for federal legislation that sets a minimum standard for privacy rights while allowing states to maintain or enact more stringent laws. The AGs emphasized the need for a flexible federal framework that can adapt to technological advancements without preempting state laws that provide greater consumer protections. While industry advocates support federal preemption to simplify compliance with a unified standard, state authorities argue that they are better equipped and nimbler to enforce privacy laws within their jurisdictions.

In another example of such tension, Texas AG Ken Paxton filed a lawsuit against the Department of Health and

Human Services (HHS) Office for Civil Rights. Texas argued that the 2000 and 2024 Privacy Rules promulgated by HHS unlawfully limit state investigators' access to protected health information (PHI), hindering enforcement of state-level abortion laws in the post-*Dobbs v. Jackson* environment. The 2000 Rule requires a three-part test for sharing PHI with state investigators pursuant to a subpoena, and the 2024 Rule increases the burden of satisfying that test specifically for reproductive health care data. Texas claims these rules exceed HHS' authority and obstruct state law enforcement.

PRIVACY AND DATA SECURITY ENFORCEMENT

State AGs continue to lead enforcement efforts when it comes to data breaches. The year was notable for the number of smaller settlements as opposed to the larger headline-grabbing multistate settlements typical of recent years. This is likely a combination of increased resources and cultivated expertise in state AG offices, and well-capitalized, larger companies heeding the lessons of past breaches. One thing is clear from 2024 — the AGs continue to wield their power against companies that fall victim to cyber-attacks regardless of the size of the company, as evidenced by several headline-grabbing multistate settlements. A trend of single-state settlements or settlements involving only a few jurisdictions is notable as AGs continue to build subject matter expertise and the ability to competently investigate smaller incidents within their respective borders.

The AGs of Connecticut, New Jersey, and New York **settled investigations** with molecular diagnostics company Enzo Biochem, Inc., regarding a 2023 data breach. The settlements addressed allegations that Enzo violated the HIPAA Security Rule and state laws, including New Jersey's Consumer Fraud Act and New York's General Business Law. The breach, resulting from a ransomware attack, compromised the personal and medical information of approximately 2.4 million patients. The attackers allegedly accessed Enzo's networks using shared employee login credentials, and installed malicious software, which went undetected for several days. Enzo did not admit to any wrongdoing in the settlements but agreed to pay a total of $4.5 million and implement new data security protocols.

The New York AG also **settled** a data breach investigation involving movie theater operator National Amusement, Inc. The breach, which was allegedly the result of shortcomings in the company's data security practices, impacted as many as 82,128 employees of the company. The AG alleged that National also delayed notification to employees for over a year. Ultimately, National settled the investigation for $250,000 and agreed to improve its cybersecurity infrastructure and prevent future data breaches. Private consumer class litigation remains pending against the company.

The incidence of small and large data breaches remains high. **Washington** AG Bob Ferguson released a report that reveals a record high in data breaches affecting Washingtonians, with more than 11.6 million notices sent out this year, surpassing the previous high of 4.8 million last year. The report highlights that 279 breaches impacted at least 500 individuals, with ransomware attacks being the most prevalent, accounting for 78% of all breaches. The report underscores the vulnerability of personal data, particularly Social Security numbers, which were compromised in 69.5% of breaches. The trends identified in Washington's early release of 2024 statistics will no doubt be repeated in other states as each prepares its year-end statistical analysis of the impact of data breaches in those jurisdictions.

INCREASINGLY SPECIALIZED ENFORCEMENT

As noted, AGs continue to develop substantial specialized expertise in privacy enforcement. In 2024, **Texas** AG Ken Paxton announced the formation of a dedicated team within the Consumer Protection Division to enforce Texas' privacy laws, including the new Data Privacy and Security Act, which took effect on July 1. This team, touted as the largest of its kind in the U.S., will handle cases under at least seven different laws, including the Identify Theft Enforcement and Protection Act, the Data Broker Law, the Biometric Identifier Act, the Deceptive Trade Practices Act, and federal laws like Children's Online Privacy Protection Act (COPPA) and HIPAA. The new Data Privacy and Security Act mandates that regulated companies allow consumers to access, edit, or delete their personal data, and opt out of data sales and targeted advertising, and that these companies collect data only for stated

purposes. Violations can result in civil penalties of up to $7,500 per violation and injunctive relief.

The creation of this unit underscores a significant shift toward prioritizing privacy enforcement within state AG offices, reflecting the rapid proliferation of privacy laws and the increasing frequency of data breaches and cyber incidents. Historically, state AGs have struggled to allocate sufficient resources solely for privacy and data security enforcement, often relying on multistate coalitions to share resources and technical expertise required to successfully engage in such complex investigations.

Texas is the second state to create a specialized enforcement team, following the creation of the California Privacy Protection Agency in 2023. These teams are staffed by experts and academics with a wide range of knowledge and expertise. As specialized enforcement teams become standard practice for regulators, companies handling consumer data must navigate the state and federal privacy regulations to ensure compliance with evolving standards and increasingly skilled law enforcement personnel.

Accordingly, state AGs are engaging in enforcement activity that is increasingly more sophisticated. California AG Rob Bonta announced a settlement with DoorDash in February to resolve allegations that the company violated the CCPA and the California Online Privacy Protection Act by selling consumers' personal information without proper notice or an opportunity to opt out. The AG's investigation centered on allegations that DoorDash participated in a marketing cooperative where businesses exchanged customer personal information for advertising purposes, which was not disclosed in its privacy policy. The investigation criticized DoorDash for allegedly ignoring warnings that the practices scrutinized during the investigation violated the CCPA. The AG asserted that consumers could not be restored to their original position (*i.e.*, pre-disclosure by DoorDash) because DoorDash was unable to identify which downstream companies received customer data. As part of the settlement, DoorDash is required to pay a $375,000 civil penalty and adhere to injunctive terms.

Bonta's work did not end there. He partnered with Los Angeles City Attorney Hyde Feldstein Soto to **settle a lawsuit** with Tilting Point Media, LLC, over alleged violations of the COPPA and the CCPA, related to a SpongeBob Square Pants-themed app in July. The complaint accused Tilting Point of improperly collecting, using, and sharing children's personal information through misconfigured third-party software development kits without proper disclosure or consent. Additionally, the company's privacy policies were found to be ambiguous and incomplete, failing to meet CCPA requirements for transparency and parental consent for users under age 13, and opt-in consent for users aged 13 to 16. As part of the settlement, Tilting Point agreed to pay $500,000 in civil penalties, among other conditions.

LITIGATING PRIVACY MANDATES

The AGs also continue, unsurprisingly, to use litigation to further their policy objectives. A primary issue that

arose in 2024 is whether courts have jurisdiction over large technology companies with national or international footprints in a state AG enforcement action.

State AGs filed a number of suits against TikTok in 2024, including Arkansas and Indiana. In May, an **Arkansas** court denied TikTok's motion to dismiss a lawsuit filed by Arkansas AG Tim Griffin. The lawsuit accuses TikTok of engaging in deceptive trade practices and unjustly profiting from the data of minors. The court found that TikTok has sufficient ties to Arkansas, including substantial app usage, data collection, financial transactions, and employment within the state, to support the court's exercise of jurisdiction over the company. The court also rejected TikTok's argument that Section 230 of the Communications Decency Act, which typically protects social media platforms from liability for third-party content, barred the state's claims. The court distinguished this case by noting that TikTok's own age-rating and content representations constitute its own speech, not third-party content.

This decision underscores the significant power AGs have in regulating digital privacy and consumer protection, especially in the rapidly evolving technology landscape, and highlights their ability to act swiftly against perceived threats using existing laws. Arkansas' lawsuit against TikTok is currently stayed after the Arkansas Supreme Court granted TikTok's petition for writ of certiorari to review the trial court's ruling on the motion to dismiss.

Indiana AG Todd Rokita also litigated whether his state has personal jurisdiction over TikTok. In September, the Indiana Court of Appeals ruled that the state did indeed have personal jurisdiction over TikTok. This decision, which may still be appealed to the Indiana Supreme Court, ruled on whether the AG can assert consumer protection claims against companies conducting digital transactions without a physical presence in the state. The court held that TikTok has substantial contacts within Indiana, which include millions of users and the exchange of user data for access to its content. This follows the trial court's previous dismissal of the AG's suit on the basis that Indiana lacked personal jurisdiction.

Personal jurisdiction has also been dispositive in other litigation. AGs from 30 states and the District of Columbia filed a **bipartisan amicus brief** encouraging the Ninth Circuit to reconsider its dismissal of a lawsuit alleging that Shopify unlawfully extracted consumer personal and financial data without consent during a purchase from a California merchant, violating several California laws. In 2022, the case was dismissed for lack of personal jurisdiction; this decision was affirmed by a three-judge Ninth Circuit panel in November 2023, which held that Shopify's general business activities in California were insufficient to establish jurisdiction without evidence of targeted conduct toward the state.

Since that decision, the Ninth Circuit has agreed to an *en banc* review of their dismissal. The AGs' amicus brief argues that the panel's decision unfairly shields online companies from accountability by requiring proof of state-specific targeting, which could allow them to evade jurisdiction everywhere. Mississippi AG Lynn Fitch, in particular, criticized the ruling for effectively granting online businesses immunity from being sued outside their home states.

The eventual outcome of these cases will significantly influence the ability of state AGs to regulate and litigate against companies with internet-based business platforms. Regardless of the outcome, state AGs will continue to explore new strategies and develop tactics to exert their regulatory authority over companies within the privacy and cybersecurity sphere.

Private Equity

Private equity (PE) has become a regulatory target of state AGs. While PE firms deploy capital across every sector of the economy, in 2024 state AGs focused their regulatory efforts on PE activity in the health care, real estate, and technology industries.

HEALTH CARE

On June 6, 2024, 11 state AGs submitted a comment letter in response to a request for information from the FTC, DOJ, and HHS. The letter focused on consolidation and vertical integration issues in the health care industry, highlighting PE involvement in nursing homes and hospitals as a particular area in need of greater antitrust scrutiny.

Specifically, the coalition argued that PE-backed physician practices control access to more than half of the health care services in metropolitan areas. To counter this perceived problem, the coalition contends that "roll-up" health care transactions, which help consolidate multiple smaller entities into one larger organization, should be subject to federal antitrust notification thresholds. The AGs went on to recommend additional enforcement and regulation, including a ban on anti-steering and anti-tiering provisions, and joint enforcement — across federal agencies and state AGs — to stop certain mergers or acquisitions.

On September 28, California Governor Gavin Newsom vetoed a bill related to PE acquisitions. The bill, sponsored by AG Bonta, would have required a PE group or hedge fund to provide written notice to and obtain written consent from the AG at least 90 days before a change of control in or acquisition of a health care facility or provider group, with exemptions. The legislation also would have authorized the AG to impose conditions on such transactions and on PE firms' ability to control acquired practices.

The bill set a "public interest" standard for determining whether the AG should approve or deny a PE firm's health care acquisition. It defined public interest as "being in the interests of the public in protecting competitive and accessible health care markets for prices, quality, choice, accessibility, and availability of all health care services for local communities, regions, or the state as a whole."

California, like Connecticut, Illinois, Massachusetts, New York, and other states, already had a dedicated health

care transaction review process. Indeed, as Newsom noted in his veto message, the California Office of Health Care Affordability was established in 2022 to review and evaluate health care consolidation transactions.

The law would have been the first to give a state AG explicit and categorical veto power over health care transactions.

Nonetheless, PE investment in health care is likely to remain a significant regulatory concern for state AGs in 2025. Moreover, the defeat of California's bill is unlikely to curtail efforts to empower state AGs to veto such transactions moving forward.

REAL ESTATE

Data suggests that PE involvement in real estate has slowed. Still, until lately multifamily real estate was considered a "hot sector" for PE. And, according to one study, "companies backed by private equity may own 40% of the nation's single-family homes" by 2030.

AGs' authority over PE landlords varies by state. In some states, AGs provide broad information on landlord-tenant matters but cannot accept written complaints. In other states, AGs receive rental complaints as part of their consumer protection offices — presumably, these AGs can investigate such complaints, or at least refer them for investigation. And in the District of Columbia, the AG can ask a judge to appoint a receiver for a property when a landlord's neglect endangers the health, safety, or security of the tenants; investigate improper withholding of security deposits, collection of illegal late fees or attorney's fees, and harassing calls from debt collectors; and even sue landlords for alleged price fixing.

TECHNOLOGY

PE participation in the technology sector is exploding. According to Morgan Stanley, "[p]rivate equity led 57% of public-to-private technology deals in the first half of 2023 — almost double their share of public-to-private technology deals in 2020, 2021 and 2022." Morgan Stanley called it "just [the] beginning."

PE serves a unique role in technology mergers and acquisitions. Due to its rapid entry into the technology sector and continuous presence, PE firms have become subject matter experts, providing technology companies with operational expertise. Some public tech companies are even considering selling to financial sponsors, like PE, to restructure without the pressure of meeting return expectations in a challenging market environment. These companies should expect increased scrutiny from state AGs and other regulators regarding such sales.

State AGs have also increased their scrutiny over the use of AI, particularly in relation to data privacy, consumer protection, and antidiscrimination laws. As mentioned in our AI section above the Massachusetts AG issued a comprehensive advisory in April 2024, clarifying the applicability of existing consumer protection, anti-discrimination, and data security laws to AI technologies.

The AG's advisory on AI carries significant implications for private equity firms, emphasizing their dual responsibility as both users and investors in AI systems. The advisory warns that Massachusetts consumer protection, civil rights, and data privacy laws apply to AI, requiring firms to ensure that their own AI deployments and those of their portfolio companies comply with legal and regulatory standards. Private equity firms utilizing AI for investment analysis, due diligence, or market evaluation must avoid discriminatory practices and ensure the transparency and accuracy of AI systems.

Technology companies span the full breadth of the American economy — from software and media to AI and cybersecurity. All these sectors face mounting regulatory interest from state AGs.