

# Unfair and Deceptive Acts and Practices

## Consumer Protections UTPA and Private Right of Action

“Unfair and Deceptive Acts and Practices (UDAP) laws should be the backbone of consumer protection in every state.

Yet in many states these statutes fall far short of their goal of deterring and remedying a broad range of predatory, deceptive, and unscrupulous business practices.”

- National Consumer Law Center

# Unfair Trade Practices Act

- Oregon and all other states have their own versions of consumer protections laws generally referred to as Unfair, Deceptive and Abusive Practices “UDAP” laws. The Unlawful Trade Practices Act (UTPA) is Oregon’s version of these consumer protection laws.
- Enacted in 1971 the UTPA is one of the few tool consumers can use to recover damages that occur as a result of deceptive sales or business practices.
- The UTPA provides individuals with a private right to sue for deceptive practices involved in the sale of real estate, goods, or services. With additional recovery powers given to the Attorney General and district attorneys.
- The UTPA only pertains to goods or services obtained for the primary purpose of personal, family, or household uses. It only addresses individuals (not businesses) that are harmed by the practices listed.

# Private Right of Action

A private right of action is defined as a right for a private person to bring a legal claim in court to seek remedy from harm or damages caused to them.

A private right of action is the right of a private individual to bring legal action against another party based on a violation of law.

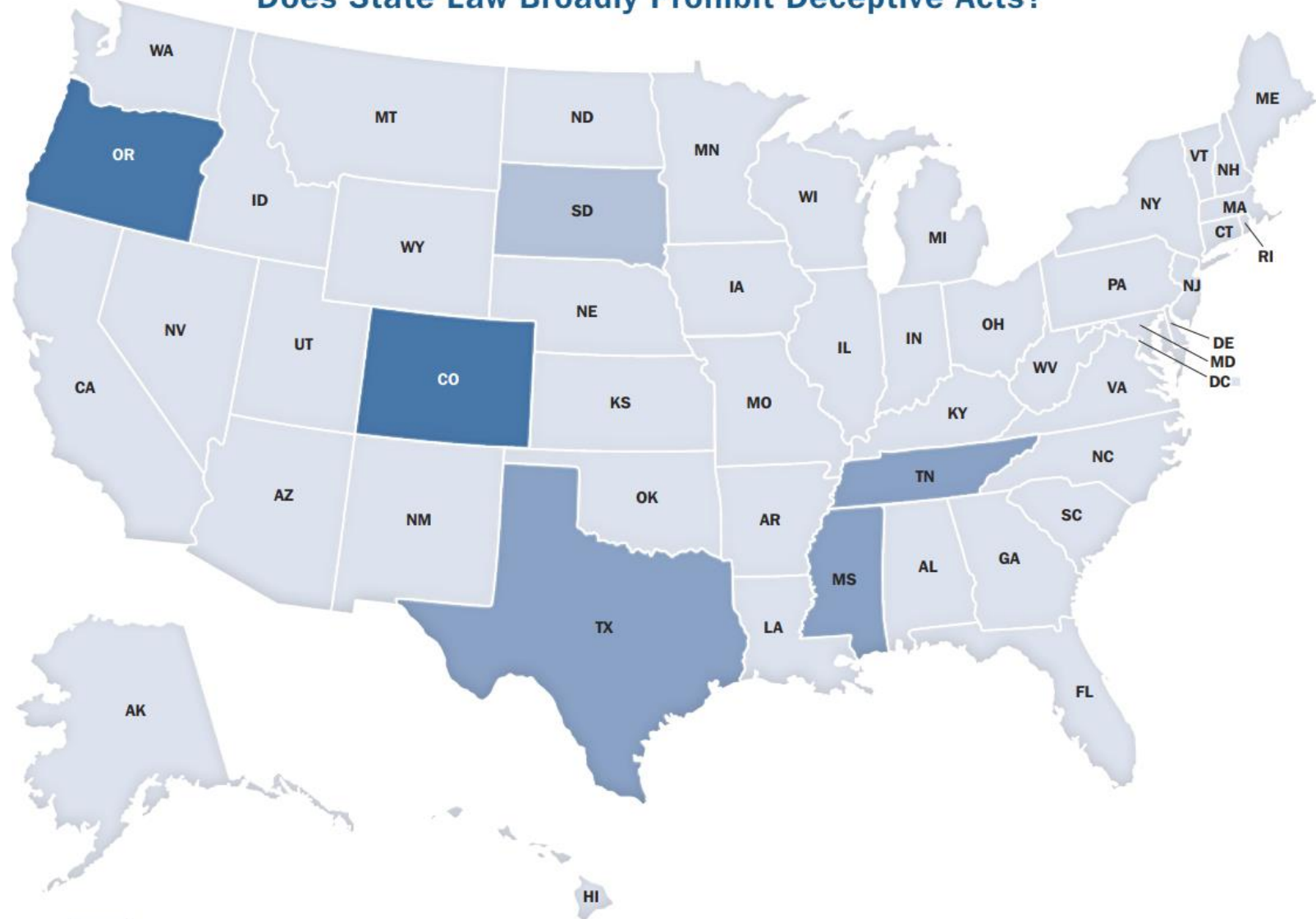
## Why Consumers Need a Private Right of Action

- The Attorney General cannot represent individual consumers and cannot bring a case for every violation due to resource constraints.
- Attorney General enforcement tends to focus on businesses that are engaged in widespread actionable conduct and patterns of practice where there are many consumers harmed.
- Department of Consumer and Business Services regulates business but cannot represent individual consumers and only seeks regulation compliance which rarely remedies harm to consumers.

## Does State Law Broadly Prohibit Deceptive Acts?

A National Consumer Law Center (NCLC) Report on consumer protection laws across the country identified:

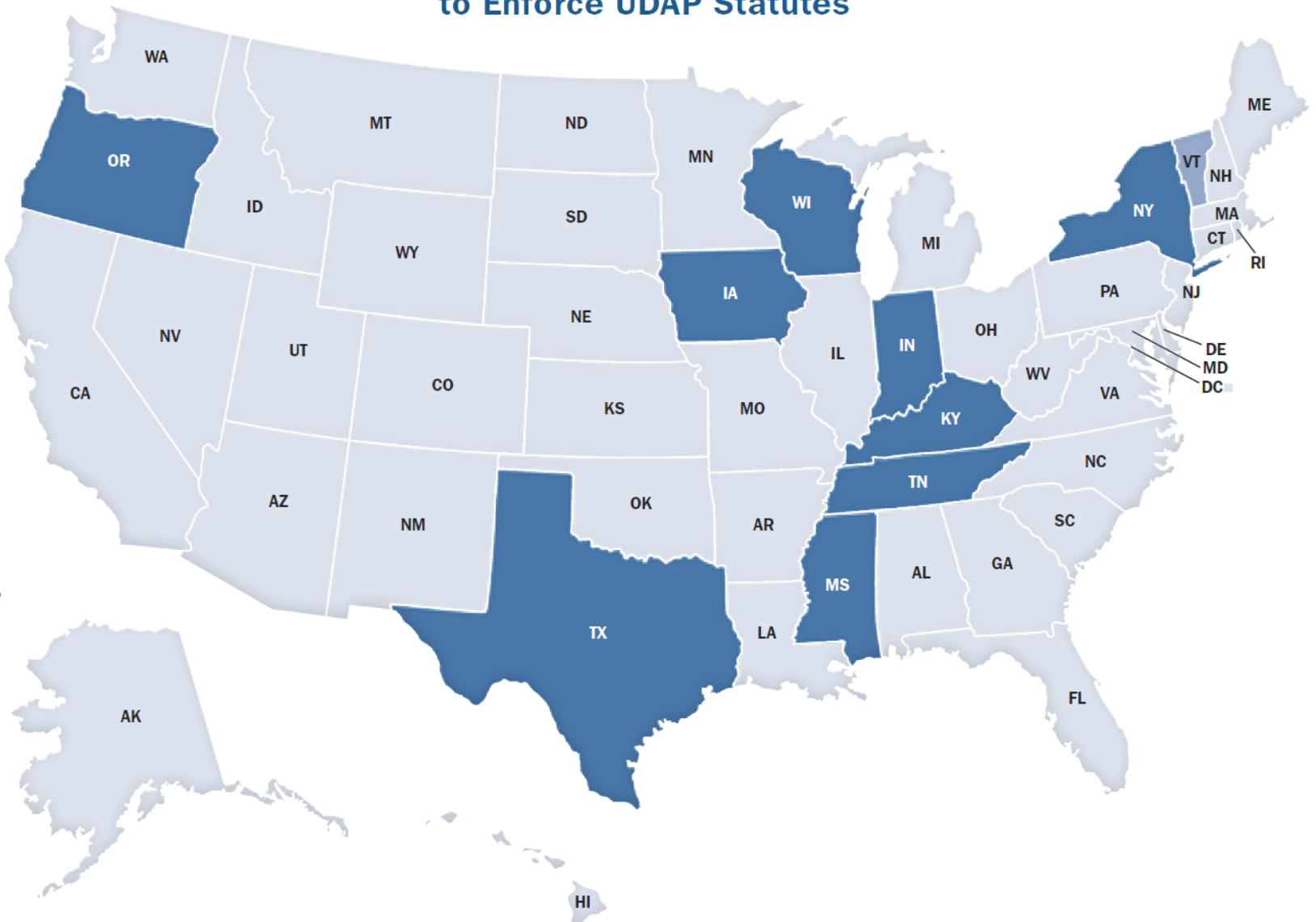
“Mississippi, Oregon, and Tennessee include general prohibitions of unfair or unconscionable practices, but do not allow consumers to enforce them”



- Statute broadly prohibits deception
- Statute broadly prohibits deception, but only if knowing and intentional
- Statute broadly prohibits deception, but consumers cannot enforce this prohibition
- Statute does not broadly prohibit deception

### States with Major Gaps in Consumers' Ability to Enforce UDAP Statutes

“In Oregon, consumers have no right to enforce the statute’s broad prohibition of “unconscionable tactics.”



- States without major gaps
- States with unresolved questions about possible gaps
- States with major gaps in consumers' ability to enforce the statute

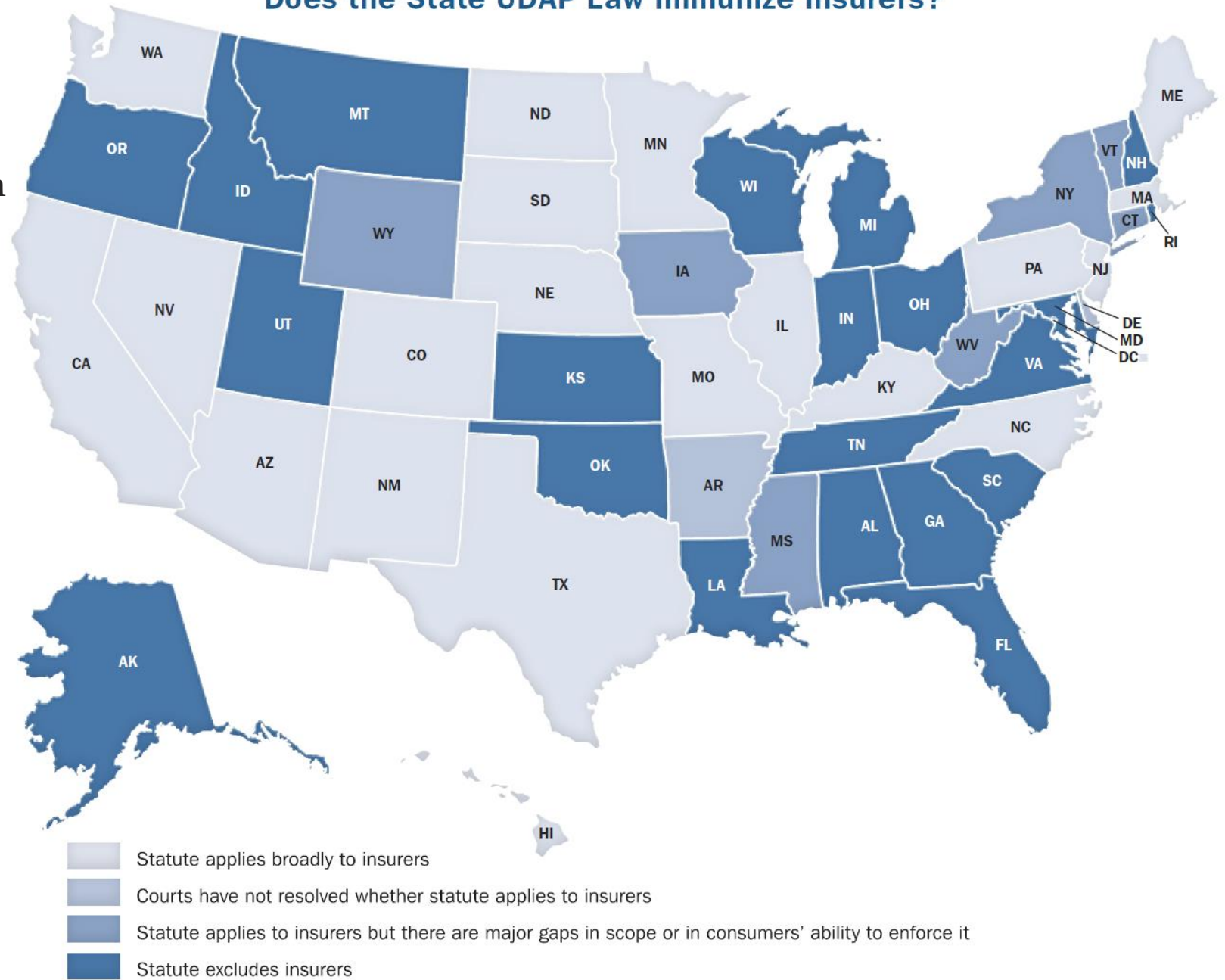
Source: ©National Consumer Law Center, 2018.

## Does the State UDAP Law Immunize Insurers?

“Insurers may justify their exclusion from UDAP statutes on the ground that they are regulated by state Unfair Insurance Practices statutes.

But in most states consumers have no right to enforce these statutes; their only recourse is to complain to the state insurance department.

State insurance departments generally do not have the resources to provide much help to individual consumers.”



# State-by-State Unfair Deceptive Acts and Practices statutes

## STRENGTHS AND WEAKNESSES

**Key:** ○ = Strong  
 ◐ = Mixed  
 ● = Weak  
 ? = Undecided\*

This chart summarizes the factors analyzed in the National Consumer Law Center's report *Consumer Protection in the States: A 50-State Evaluation of Unfair and Deceptive Practices Laws*

	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI	SC	SD
<b>PRACTICES PROHIBITED</b>														
Broad deception prohibition	◐	◐	◐	○	○	○	○	○	○	●	○	○	○	◐
Broad unfairness prohibition	●	○	○	○	◐	○	○	○	○	◐	?	○	○	●
Rulemaking authority	○	●	○	○	●	●	◐	○	●	○	○	◐	●	●
<b>SCOPE</b>														
Covers credit	○	●	○	○	○	○	○	●	?	○	○	●	○	○
Covers insurance	◐	◐	○	○	◐	○	○	●	●	●	○	●	●	○
Covers utilities	○	●	●	○	○	○	○	●	●	○	○	●	○	○
Covers post-sale acts	○	◐	?	○	○	○	○	◐	?	○	○	?	○	?
Covers real estate	○	○	○	●	○	○	○	●	○	○	○	◐	○	○
<b>STATE ENFORCEMENT</b>														
Civil penalty amount	◐	○	○	◐	◐	◐	◐	○	○	○	○	●	●	◐
Does not require proof of intent or knowledge	●	○	○	◐	○	○	◐	○	○	○	○	○	○	○
<b>REMEDIES FOR CONSUMERS</b>														
No major gaps in scope of consumers' ability to enforce	◐	◐	◐	○	●	○	○	○	○	●	○	○	○	○
Multiple or punitive damages	?	○	○	○	◐	○	○	○	●	○	○	○	○	●
Attorney fees for consumers	○	○	○	○	○	○	○	○	○	○	○	○	○	●
Class actions	○	○	○	○	○	○	○	○	○	○	○	○	●	○
Allows consumer suit without proof of reliance	?	○	○	○	○	●	○	○	?	◐	●	○	?	?
Allows consumer suit without proof of public impact	○	○	○	○	●	○	○	○	○	○	○	○	●	○
Allows consumer suit without pre-suit notice	○	○	○	○	○	○	○	○	○	○	○	○	○	○
Allows consumer suit for any type of injury	◐	◐	◐	○	○	○	○	○	○	●	●	●	●	○

## Key Findings from: National Consumer Law Center (NCLC) Report

# CONSUMER PROTECTION IN THE STATES A 50 State Evaluation of Unfair and Deceptive Practices Laws

Three states stand out as particularly weak. The **Colorado** UDAP statute includes *neither* a broad prohibition of deception nor one of unfair or unconscionable acts. The **Oregon** statute, while it includes a broad prohibition of “unconscionable tactics,” denies consumers the right to enforce it. In addition, what might appear to be a broad prohibition of deception is limited to specific acts prohibited by attorney general rules. **South Dakota** does not include a broad prohibition of unfair or unconscionable acts, and makes the statutory prohibition of deceptive acts of little use to consumers by imposing on them the burden of showing that the act was both knowing and intentional. These three states’ substantive prohibitions are the weakest in the nation.

**Colorado, Oregon, and South Dakota** have the weakest substantive prohibitions in the nation.

[https://www.nclc.org/wp-content/uploads/2022/09/UDAP\\_rpt.pdf](https://www.nclc.org/wp-content/uploads/2022/09/UDAP_rpt.pdf)