CLIENT ALERTS & INSIGHTS

State AGs are Busy Bees: Benesch Continues to Monitor the Implications of Recent State AG Actions

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Featured Practices: Litigation, State Attorneys General Investigations & Enforcement

Key Takeaways

- State attorneys general are ramping up enforcement and guidance across a wide range of issues-from consumer protection and pricing transparency to AI use, data privacy and environmental harms-stepping in to fill perceived federal gaps.
- This patchwork of aggressive, state-level actions are signaling that proactive compliance is more important than ever. Businesses face increased regulatory risk, particularly in consumer-facing industries, by creating inconsistent standards, heightened scrutiny on emerging technologies (like AI), and expanding enforcement around fees, disclosures and data practices.
- Companies should proactively assess enforcement-related risk by reviewing pricing, disclosures, AI governance and data practices, conducting internal compliance audits, and monitoring state-specific developments to address issues before they trigger investigations or enforcement.

With the perceived lack of federal oversight and enforcement, state attorneys general ("AGs") continue filling the gap. Their enforcement actions and proactive guidance provide insight into the priorities of the different offices and warn private sector actors of areas where a focus on compliance is paramount. The Benesch team flagged some of these recent AG actions to highlight current enforcement priorities.

- The Michigan AG entered a $108 million settlement with Monsanto related to the contamination of Michigan waterways with polychlorinated biphenyls manufactured by the company.
- The New Jersey AG issued guidance directed at hotels and other short-term rental companies, in advance of the upcoming World Cup, warning against the use of junk fees in pricing structures. This guidance portends future enforcement for those who elect to fail to comply.

- The Pennsylvania AG reached a settlement with Geico regarding auto insurance cancellations allegedly lacking proper notification to the consumer. In this case, the AG contended that Geico was using AI to flag accounts for further review. The company asked the consumer for additional documentation but allegedly failed to notify the consumer that the provided documentation was insufficient. As part of the settlement, Geico agreed to conform its AI policy to the guidance issued by the Pennsylvania Insurance Department.
- The Texas AG sued Discord under the Deceptive Trade Practices Act, alleging the company allowed predators to groom children and deceived parents and the public regarding its safety protocols.
- The Texas AG also issued a civil investigative demand to Meta regarding the monitoring and collection of facial data through Meta AI glasses.
- The Washington AG entered a consent decree with a home cleaning company that advertised a low fee to customers, but significantly increased the cost to consumers through a membership structure with large cancellation fees. The consent decree requires the company to increase upfront transparency with the consumer regarding the actual costs the consumer will face.
- A coalition of 25 states and the District of Columbia have filed suit against the U.S. Department of Education challenging a new rule limiting the availability of federal student loans to graduate students and students in professional schools. This could have impacts on both educational institutions and private financing companies.
- Four states (Nebraska, Texas, West Virginia and Iowa) have filed suit against Institutional Shareholder Services Inc. ("ISS"), following a previous suit by the Florida AG, alleging that ISS mislead investors when it used its platform to push for ESG and DEI initiatives at companies.

Companies in consumer-facing industries should be aware of state AG actions and monitor developments, and those facing AG risk should consider conducting internal reviews for potential enforcement exposure and preemptive compliance.

Benesch's State Attorneys General Investigations & Enforcement group continues to monitor all developments with state AGs and advise clients on proactive mitigation, risk assessment and interactions with the state AGs.

Please reach out to Benesch's State AG Group if you have any questions.