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Download the full report, a state-by-state chart comparison, 14 comparative maps, capsule summaries of each state and the District of Columbia laws, and summaries of each jurisdiction's statutes at:
<http://bit.ly/2DJKbGp>

How Well Does Pennsylvania Protect Consumers from Unfair and Deceptive Business Practices?

National Consumer Law Center Survey Finds Weaknesses in Pennsylvania's UDAP Law

PHILADELPHIA— State Unfair and Deceptive Acts and Practices (UDAP) laws prohibit deceptive practices in consumer transactions, such as sales of cars and other goods, loans, home improvements, utility contracts, and mortgage transactions. A [new report](#) from the National Consumer Law Center (NCLC) finds that Pennsylvania's UDAP statute has serious weaknesses:

- The low civil penalty (just \$1000—lower than all but five other states) that the attorney general can seek for violations
- Court decisions that have weakened the statute by imposing burdensome requirements taken from common law fraud cases (such as proof of reliance and intent to defraud) and contract cases (such as prohibiting evidence of oral misrepresentations)
- Ambiguities about whether what appears to be a broad prohibition of unfairness has any independent meaning
- A restriction that only a consumer who has “lost money or property” can enforce the statute, so consumers who have suffered an intangible injury such as invasion of privacy or who seek injunctive relief to prevent threatened harm are left out

“Unfair And Deceptive Practices laws are needed so those who are financially vulnerable and those in low income communities have a resource and tool available to them as they work to build strong financial foundations for themselves,” **said Ingrid R. Shepard, executive director of THE ONE LESS FOUNDATION.** “UDAP laws have the ability to create equity and balance between a strong marketplace and strong consumer protections. UDAP laws, when strong have the ability to support the foundations that help families escape poverty.”

Strengths of Pennsylvania's UDAP statute include:

- Its scope, as courts have not created blanket exemptions for specific industries
- Its remedies for consumers, which include multiple damages and attorney fees

“Recent findings by the Pennsylvania Public Utility Commission have concluded that excesses in the competitive electric market have led to low-income utility consumers and other ratepayers paying millions of dollars more for electricity from retail, competitive energy suppliers than if those customers had received utility-provided service,” **said Patrick Cicero, executive director of the Pennsylvania Utility Law Project.** “Unfair and Deceptive Acts and Practice laws are a critical piece of the puzzle in reigning in abusive marketing and deceptive pricing practices by unscrupulous suppliers, marketers, and their agents.”

“Unfair and Deceptive Acts and Practices laws should be the backbone of consumer protection in every state, but significant gaps or weaknesses in almost all states undermine the promise of these vital protections so the deck is stacked against consumers,” said **Carolyn Carter, National Consumer Law Center Deputy Director and author of [Consumer Protection in the States: A 50-State Evaluation of Unfair and Deceptive Practices Laws](#)**.

Key Recommendations

States that want to strengthen their protections for consumers should:

Strengthen their UDAP statute’s substantive prohibitions by:

- Making sure that the statute includes **broad prohibitions** of deceptive and unfair acts that consumers can enforce.

Strengthen their UDAP statute’s scope by:

- **Narrowing or deleting any exclusion for regulated industries**, so that is clear that the mere fact of regulation is not a license to engage in unfair and deceptive practices.
- **Eliminating exemptions** for lenders, other creditors, insurers, and utility companies.
- Making it clear that the statute applies to **real estate transactions** and to **post-transaction matters** such as abusive collection of consumer debts.

Strengthen the state’s ability to enforce the statute by:

- Deleting any requirement that **knowledge or intent** be proven as an element of a UDAP violation.
- Increasing the size of the **civil penalty** and making sure that it is applicable per violation.
- Allowing courts to order a business to **pay the state’s attorney fees** and costs when the state prevails in a UDAP case.
- Providing **adequate funding** for the consumer protection activities of the state agency.

Strengthen consumers’ access to justice by:

- Removing any gaps in consumers’ **ability to enforce** the statute.
- Making it clear that courts can order a business to pay a consumer’s **attorney fees**, and that the consumer cannot be held responsible for the business’s attorney fees if the case was filed in good faith.
- Removing any restrictions on UDAP **class actions**, so that they are governed by the state’s usual rules (or by the federal rules if the case is led in federal court).
- Deleting any **special barriers** imposed on consumers before they can invoke a statute’s remedies, such as a special advance notice requirement, a requirement that a consumer who has been cheated prove that the business cheats consumers as a general rule, or a rule that denies consumers who have suffered an invasion of privacy or some other non-monetary injury the ability to enforce the statute.
- Amending the statute to make it clear that courts can **presume that consumers relied on material misrepresentations**, without requiring individual proof.
- Allowing consumers to seek **enhanced damages or punitive damages** in appropriate cases.

Even if a UDAP statute is already free from these weaknesses, it can often be improved by, for example, making attorney fee awards to consumers mandatory, so that if they prevail they are assured of being made whole, and making it clear that the heightened requirements of common law fraud and rigid contract law rules are not applicable to UDAP claims.

A full list of recommendations is available at <http://bit.ly/2DJKbGp>.

For more on NCLC's body of work on unfair and deceptive practices, please visit: <https://www.nclc.org/issues/unfair-a-deceptive-acts-a-practices.html>. Subscription information for NCLC's *Unfair and Deceptive Acts and Practices*, and free access to Chapter One of all of the legal treatises in NCLC's Consumer Credit and Sales Legal Practices Series, is available at <http://www.nclc.org/library>.

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At [THE ONE LESS FOUNDATION](#), we take a two-generational approach to ending poverty by focusing on the needs of both adults and youth, in providing access to programs and resources that help entire families create paths out of poverty.

Since 1980, the [Pennsylvania Utility Law Project](#) has been the dedicated legal aid office of the Pennsylvania Legal Aid Network representing the interests of low income Pennsylvanians on energy, water, telecommunications, and other utility concerns before the Public Utility Commission and other state and federal agencies.

Since 1969, the nonprofit [National Consumer Law Center](#)® (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training.