

Predicting Where State AGs Will Direct Their Attention in 2025

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In the [first installment](#) of this two-part article, state attorneys general across the U.S. took bold action in 2024 to address what they perceived as unlawful activities by corporations in several areas, including privacy and data security, financial transparency, children's internet safety, and other overall consumer protection claims.

In 2025, we expect state attorneys general will navigate a new presidential administration while continuing to further regulate and police financial services, artificial intelligence, junk fees, and antitrust.

State attorneys general will fill the anticipated federal regulatory void in 2025.

On the campaign trail and since his election, President-elect Donald Trump committed that his second presidential administration would take a more hands-off approach to federal regulation — similar to his first term. Federal regulations regarding the environment, financial services and antitrust are the most likely candidates to either be rolled back or unenforced.

With new leaders at the helm of federal agencies who share Trump's opinions, particular agencies, like the Consumer Financial Protection Bureau, the U.S. Environmental Protection Agency and the Federal Trade Commission, will seek to roll back or not enforce federal regulations deemed to be antibusiness.

A significant development in this regulatory shift is the proposed One Agency Act, which aims to reassign antitrust responsibilities from the FTC to the U.S. Department of Justice's Antitrust Division. This move is expected to streamline antitrust enforcement under a single agency, reflecting the administration's intent to reduce regulatory burdens on businesses. The consolidation is anticipated to create a more business-friendly environment by potentially reducing the number of antitrust investigations and enforcement actions.

Regardless of whether this bill passes into law, this legislation demonstrates Republicans' focus on decreasing federal agency regulatory enforcement.

We expect state attorneys general to fill this regulatory void by initiating investigations into and litigation against corporations engaging in activities that might have attracted interest from federal regulators in the Biden administration.

During the annual three-day Capital Forum in December, former Oregon Attorney General Ellen Rosenblum spoke with CFPB Director Rohit Chopra, who not only highlighted the bureau's recent actions, but called on state attorneys general to continue to take aggressive action against financial services.^[1] We expect state attorneys general will answer this call through their traditional consumer protection authority, while also looking to pass new statutes that prohibit specific conduct.

State attorneys general have already started to send a message that their traditional authority to prosecute unfair and deceptive acts and practices statutes is broad enough to cover emerging technologies.

The Oregon Attorney General's Office released AI guidance on Dec. 24 for businesses that warned that, even though Oregon does not have a specific AI law on the books yet, several "traditional" laws may be implicated as businesses deploy AI.^[2] These include Oregon's consumer protection statute; privacy statutes such as its comprehensive consumer privacy law, the Oregon Information Protection Act; and the state's bias and discrimination law.

The announcement follows similar pronouncements and actions from state attorneys general over the past year, including Texas and Massachusetts. This trend of utilizing traditional enforcement actions to address rapid AI proliferation will continue as state attorneys general look to address AI in the absence of specific federal legislation.

We do expect that state attorneys general will seek to expand their tool kits by passing state legislation that accords with many of the rules and regulations pushed under the Biden administration, even if those same rules are rolled back. For instance, California and Minnesota recently passed junk fee laws with other states sure to follow, while a number of states have passed laws implicating social media platforms similar to rules, regulations and legislation that stalled at the federal level.

Multistate prosecutions will have a different flavor.

For decades, state attorneys general on both sides of the aisle have come together to bring multistate prosecutions against defendants whose alleged unlawful activities involve Americans across state lines.

The multistate process was designed for efficiency, requiring fewer resources than if all 56 state attorneys general, including Washington, D.C., and territories, were to independently address a specific consumer protection issue. The executive committee of a multistate prosecution shoulders this responsibility, making day-to-day decisions on behalf of the larger multistate group.

The multistate structure has yielded key settlements, with two notable examples being the 1990s tobacco litigation and the ongoing opioid litigation.^[3] But we have started to see cracks in the multistate process and expect that it will begin to be used more by politically aligned state attorneys general.

Exacerbated by the opioid litigation, small states like West Virginia and New Mexico broke from the larger group because their state attorneys general did not feel their citizens' needs were being met by the multistate process. On the flip side, California broke from a number of other ongoing multistate investigations because it believed that a settlement's monetary allocation should be split between the states based solely on population.

In addition, some Republican state attorneys general have expressed discomfort with pursuing large monetary settlements that are simply paid to state coffers without an emphasis on consumer restitution.

While multistate investigations continue to proceed, we have seen more states willing to break off from large groups and prosecute actions on their own when the group's strategy and philosophy do not sync with theirs. When this occurs, companies become less likely to agree to a multistate settlement that does not offer global peace, especially when such a settlement sets a floor — not a ceiling — on the expectations of separately investigating or litigating states.

We should expect to see an increase in multistate actions over the next four years. The polarization of attorneys general will likely result in Democratic attorneys general focusing on core areas like financial services, while Republican attorneys general may see an uptick in their enforcement trends related to diversity, equity and inclusion; environmental, social and governance issues; and companies sharing information with countries like China.

However, as we saw during the first Trump administration, states found ways to come together on bipartisan efforts, resulting in an uptick in enforcement activities. The Attorney General Alliance will continue its efforts to foster a cooperative bipartisan forum, focusing on issues such as human trafficking, organized retail crime and large technology companies.

State attorneys general are more willing to litigate — and increase their use of plaintiffs counsel as outside counsel.

The increased recognition, success and expanded statutory prescriptions of state attorneys general has resulted in a loop of growth, often allowing offices to beef up the number of attorneys in consumer and antitrust units, while also creating new units to take on data privacy, civil rights and environmental laws.

For instance, the Washington Attorney General's Office's consumer protection attorneys quadrupled under Attorney General Bob Ferguson's tenure. Not only have state attorneys general grown in capacity, but their attorneys are often more willing to litigate if the attorney general believes the company is not addressing the office's concerns.

Historically, plaintiffs firms represented states against companies in securities issues to protect state investments. The tobacco and opioid litigations opened the door to more areas of consumer protection, expanding the scope of cases where states might seek outside counsel.

While many state attorney general's offices have grown, some may continue to have less than 10 consumer protection attorneys to assess and respond to thousands of consumer complaints. The latter group is more willing to retain outside counsel to supplement their capacity and take on the complex cases that require additional staffing. For instance, in the joint consumer protection lawsuits against Meta, Arkansas, Mississippi, New Hampshire, New Mexico, Nevada and Utah retained outside counsel to bring their respective litigation in state courts.

We have seen an increase in plaintiffs firms lobbying states for work, and given the need for state attorneys

general to fill the regulatory void created by the Trump administration's expected regulatory approach, and the expected increase in state attorneys general who decide to go it alone instead of joining multistate litigation, we expect certain state attorneys general may struggle to maintain adequate staffing and funding to support the litigation they commence.

For that reason, hiring outside counsel more frequently on a contingency basis would expand an attorney general's litigation resources without requiring legislative appropriations.

Expect state attorneys general to focus on AI, financial services and hidden fees.

Turning to substantive areas, we expect state attorneys general to take an interest in financial services, AI, hidden fees — including drip pricing and junk fees — auto-renewal programs, and antitrust enforcement.

Financial Services

As federal scrutiny by the CFPB and FTC diminishes, state attorneys general are expected to increase their efforts to regulate financial services, ensuring that consumer rights are upheld and that any gaps left by federal agencies are effectively addressed. They are likely to focus on areas such as fintech partnerships, true lender issues and the recharacterization of noncredit products as credit.

Additionally, state attorneys general may collaborate with state banking regulators to ensure comprehensive oversight. Companies in the financial services industry should be proactive in engaging with state regulators, both offensively by educating them about their products, and defensively by preparing for potential investigations.

AI

In September, Texas Attorney General Ken Paxton secured what his office called a “first-of-its-kind” settlement with Pieces Technologies, an AI healthcare technology company, in *State of Texas v. Pieces Technologies Inc.*, in the 191st District Court of Dallas County, Texas. Paxton's office alleged the company made a series of false and misleading statements, including those regarding a series of metrics the company created regarding the accuracy and safety of its products.

We expect state attorneys general to follow in Paxton's footsteps and target companies that make claims about AI capabilities or deploy algorithms that are perceived to disproportionately harm vulnerable populations. For example, AI-driven lending tools that perpetuate racial or socioeconomic biases could be investigated or prosecuted under existing antidiscrimination laws, while deceptive marketing of AI-powered products may be pursued under unfair and deceptive acts and practices statutes.

Hidden Fees and Automatic Renewal Contracts

A 2024 report by the White House's National Economic Council highlighted that Americans spend more than \$90 billion annually on junk fees, i.e., hidden fees, averaging over \$650 per household.[4] These fees lead to widespread consumer frustration and are especially prevalent in banking, telecommunications, travel and entertainment.

We expect state attorneys general will continue to bring the fight to the state level if they want to ban junk fees.

Additionally, during the last several years, many states have adopted or expanded state automatic renewal contract laws, driven in large part by new subscription-based contracts sold in digital distribution and contracting channels. The two primary areas on which consumer protection is focused are (1) enrolling consumers in automatic renewal contracts in the first instance, and (2) inhibiting consumers' easy disenrollment from automatic renewal contracts through what today are referred to as "dark patterns."

California Attorney General Rob Bonta publicly stated his belief that businesses must make it as easy to cancel subscriptions as it is to sign up for them.[5] We expect many other states will take the same posture and actively seek opportunities in 2025 to investigate and reach settlements that reinforce this expectation.

Antitrust

In recent years, state attorneys general have increasingly taken independent antitrust enforcement actions, moving away from their historical role of allowing the DOJ or FTC to lead a joint antitrust litigation. This shift began due to concerns about reduced federal enforcement under the first Trump administration, and continued through the Biden administration, with states initiating successful lawsuits involving the Kroger-Albertsons merger[6] and the NCAA,[7] reflecting their growing autonomy and proactive stance.

Historically, antitrust actions have often taken place on a bipartisan level, with both Democratic and Republican attorneys general collaborating on significant cases. However, it is important to note the initiatives led by Republican attorneys general, such as actions related to ESG and private equity.

Over the last year, legislation has percolated across several states that would implement state-level premerger notification laws. These laws have varied from blanket notification requirements of all transactions that are reported to the DOJ and FTC and above certain monetary thresholds, to more narrowly tailored premerger notifications for transactions involving private equity firms acquiring healthcare companies. Thus far, most of these bills have failed to pass.

However, these bills are supported by many state attorneys general and are seen as a way to prevent anticompetitive effects.

In September, California Gov. Gavin Newsom vetoed A.B. 3129 — which would have authorized the California attorney general to veto private equity or hedge fund acquisitions of healthcare facilities or provider groups. We expect California and other state attorneys general to press their legislatures for greater oversight of transactions occurring in their states, especially transactions involving hospitals and other healthcare providers.

We also expect that state attorneys general will enhance their focus on businesses necessary for the continued growth of AI.

In December, a coalition of nine organizations sent a letter to the National Association of Attorneys General and members of the NAAG Antitrust Subcommittee and working group urging the states to initiate an antitrust enforcement action against a major player related to alleged anticompetitive actions related to monopolizing chip

markets.[8] The DOJ and FTC are already investigating various players in the AI ecosystem — however, the states have not yet publicly launched similar probes.

That is likely to change in 2025.

Conclusion

While predicting the future is a fool's errand, we are confident that state attorneys general will intensify their focus on areas such as financial services, AI, hidden fees and antitrust enforcement, particularly in light of anticipated federal regulatory rollbacks under the new Trump administration.

Additionally, the trend of politically aligned multistate actions and the increased use of outside counsel will shape the landscape of state-led litigation, reflecting a more proactive and resourceful approach to addressing emerging legal and regulatory challenges.

[1] <https://www.regulatoryoversight.com/2024/12/leadership-changes-at-naag/>.

[2] <https://www.regulatoryoversight.com/2025/01/oregon-ag-rosenblum-issues-ai-guidance-for-businesses/>.

[3] <https://www.naag.org/our-work/naag-center-for-tobacco-and-public-health/the-master-settlement-agreement/>.

[4] <https://www.whitehouse.gov/cea/written-materials/2024/03/05/the-price-isnt-right-how-junk-fees-cost-consumers-and-undermine-competition/>.

[5] <https://oag.ca.gov/news/press-releases/attorney-general-bonta-supports-ftc%E2%80%99s-effort-facilitate-cancellation-unwanted#:~:text=California%20already%20has%20in%20place,includes%20the%20automatic%20renewal%20or>.

[6] <https://www.regulatoryoversight.com/2024/07/a-look-at-state-ag-supermarket-antitrust-enforcement-push/>.

[7] <https://www.regulatoryoversight.com/2024/05/florida-new-york-and-the-district-of-columbia-join-ncaa-antitrust-lawsuit/>.

[8] <https://www.documentcloud.org/documents/25463078-state-ag-nvidia-letter-12-18-24/>.

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