

# STATE ATTORNEYS GENERAL 102

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# What can States get with their authority?

## Massachusetts CID

“produce **documentary** material pertinent to the investigation for inspection or copying, to answer written **interrogatories** in writing and under oath, to give **oral testimony** concerning documentary material or information, or to furnish any combination of such material, answers or testimony”

## Texas

CID: “**documentary material** relevant to the subject matter of an investigation”

Reports & Examinations:

- (1) require the person to file on the prescribed forms a **statement or report in writing**, under oath or otherwise, as to all the facts and circumstances concerning the alleged violation and such other data and information as the consumer protection division deems necessary;
- (2) **examine under oath** any person in connection with this alleged violation;
- (3) **examine any merchandise or sample** of merchandise deemed necessary and proper; and
- (4) pursuant to an order of the appropriate court, **impound any sample** of merchandise that is produced in accordance with this subchapter and retain it in the possession of the division until the completion of all proceedings in connection with which the merchandise is produced.

# What can States get with their authority?

## Texas

Antitrust CID differences:

- Interrogatories
- Oral Testimony is confidential
- Return of documentary material after investigation complete
- Limited by rules of procedure

# What can States get with their authority?

## California

Not called a CID, not in consumer statute

(a) Inspect and copy books, records, and other items described in subdivision (e)...

(e) **Issue subpoenas** for the attendance of **witnesses and the production of papers**, books, accounts, documents, any writing ...tangible things, and testimony pertinent or material to any inquiry, investigation, hearing, proceeding, or action conducted in any part of the state.

(f) Promulgate **interrogatories**...

# What can States get with their authority?

## Arizona

1. Require such person to file on such forms as he prescribes a **statement or report in writing**, under oath, as to all the facts and circumstances concerning the sale or advertisement of merchandise by such person, and such other data and information as he may deem necessary.
2. **Examine under oath** any person in connection with the sale or advertisement of any merchandise.
3. Examine any merchandise or **sample** thereof, or any record, book, **document**, account or paper as he may deem necessary.
4. Pursuant to an order of the superior court, **impound any record**, book, document, account, paper, or sample or merchandise material to such practice and retain the same in his possession until the completion of all proceedings undertaken under this article or in the courts.
  - Under a separate section, may also **issue subpoenas and conduct hearings**

# Do you have to respond?

- **The attempted anonymous objector to a CID**

*ABC Company, Inc. v. Commonwealth of Kentucky, ex rel. Conway*, 2012 WL 3629487(2012)(Unpublished Opinion).

Also related is *American National University of Kentucky, Inc., F/K/A National College of Kentucky, Inc. v. Commonwealth of Kentucky, ex rel. Andy Beshear*, 16-1372 (October 10, 2017).

- **Broad powers to compel testimony**

*In the matter of Eric T. Schneiderman*, 2015 N.Y. Misc. LEXIS 1732; 2015 NY Slip Op 30851(U) (N.Y. S. Ct. May 18, 2015).

- **A state's dilatory conduct doesn't affect the validity of the CID**

*State ex rel. Brnovich v. 6635 N. 19th Avenue, Inc.*, 2016 Ariz. App. Unpub. LEXIS1601(Ariz. Ct. App. Dec. 20, 2016).

# State complaints: Mediation?

## Formal

- **Vermont:** “We can try to help you resolve a consumer complaint with a business. This is not a formal legal process, and we cannot guarantee a response or resolution. However, we find that we are often able to help consumers like you get responses to complaints through this process.”
- **Maryland :** “The Consumer Protection Division mediates most complaints ...If we can mediate your dispute, your complaint will be assigned to the first available mediator once we receive your documents. ... Complaints are handled by volunteer mediators in the order in which they are received by the office... If our mediation efforts are not successful, it may be possible for your dispute to be resolved through our Arbitration Program.”

# State complaints: Mediation?

## Informal

- Case by Case:
  - **Hawaii:** "How We Use Your Complaint: We collect and maintain consumer complaints in a database.... We don't have the resources to investigate every case and our enforcement is limited to cases that involve significant harm to a substantial number of consumers."
  - **Georgia:** "Depending on the nature of your claim, we may communicate with the business involved before responding to you."

# State complaints: Can you see them?

- Databases online in certain states – MA and VA for instance
- FOIA requests
- Considered to be investigative
- Contribute to Sentinel?

# Presuit Notice to Company?

- **Most states – no notice required**

## **TX 17.47**

Nothing herein shall require the consumer protection division to notify such person that court action is or may be under consideration. Provided, however, the consumer protection division shall, at least seven days prior to instituting such court action, contact such person to inform him in general of the alleged unlawful conduct. Cessation of unlawful conduct after such prior contact shall not render such court action moot under any circumstances, and such injunctive relief shall lie even if such person has ceased such unlawful conduct after such prior contact. Such prior contact shall not be required if, in the opinion of the consumer protection division, there is good cause to believe that such person would evade service of process if prior contact were made or that such person would destroy relevant records if prior contact were made, or that such an emergency exists that immediate and irreparable injury, loss, or damage would occur as a result of such delay in obtaining a temporary restraining order.

# Presuit Notice to Company?

- **But many states have consumer and class action notice requirements. Ex:**

## **Indiana IC 24-5-0.5-5 Limitation of actions**

Sec. 5. (a) No action may be brought under this chapter, except under section 4(c) [attorney general action] of this chapter, unless (1) the deceptive act is incurable or (2) the consumer bringing the action shall have given notice in writing to the supplier within the sooner of (i) six (6) months after the initial discovery of the deceptive act, (ii) one (1) year following such consumer transaction, or (iii) any time limitation, not less than thirty (30) days, of any period of warranty applicable to the transaction, which notice shall state fully the nature of the alleged deceptive act and the actual damage suffered therefrom, and unless such deceptive act shall have become an uncured deceptive act.

# Presuit Notice to AG?

**Some also require notice of private action to the state AG – another source for AG investigation**

## **Texas Sec. 17.501. CONSUMER PROTECTION DIVISION PARTICIPATION IN CLASS ACTION.**

- (a) A consumer filing an action ...that is to be maintained as a class action shall send to the consumer protection division:
- (1) a copy of the notice required by Section [17.505\(a\)](#)...; and
  - (2) a copy of the petition ...
- (b) The court shall abate the action for 60 days if the court finds that notice was not provided to the consumer protection division as required by Subsection (a).
- (c) The court, on a showing of good cause, may allow the consumer protection division, as representative of the public, to intervene in an action to which this section applies. The consumer protection division shall file its motion for intervention with the court before which the action is pending and serve a copy of the motion on each party to the action.

## **Louisiana**

B. Upon commencement of any action brought under Subsection A of this Section, the plaintiff's attorney shall mail a copy of the petition to the attorney general, and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the attorney general, but failure to conform with this Subsection shall not affect any of plaintiff's rights under this Section.

## **Class Action Fairness Act**

# THANK YOU



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## How To Protect Employee/HR Data and Comply with Data Privacy Laws July 20, 2022



As workforces become increasingly mobile and remote work is more the norm, employers face the challenge of balancing the protection of their employees' personal data and privacy against the need to collect and process personal data to recruit, support and monitor their workforces. Mounting regulations attempt to curb employers' ability to gather and utilize employee data—from its historical use in processing employee benefits and leave requests to employers' collection, use or retention of employees' biometric data to ensure the security of the organization's financial or other sensitive information systems. Learn what employers can do now to protect employee data and prepare for the growing wave of data privacy laws impacting the collection and use of employee personal data.

This webinar will cover:

- Existing and prospective laws and regulations employers should be aware of when managing their workforce
- Key principles to adhere to when collecting and handling employee personal data
- Best practices for protecting employee personal data during the employment life cycle

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