

RYAN A. BIZZARRO, CHAIRMAN

116 MAIN CAPITOL BUILDING
P.O. BOX 202003
HARRISBURG, PA 17120-2003
(717) 772-2297



HOUSE MAJORITY POLICY COMMITTEE

PAHOUSE.COM/POLICY
POLICY@PAHOUSE.NET
✕ f @ @PADEMPOLICY

HOUSE OF REPRESENTATIVES
COMMONWEALTH *of* PENNSYLVANIA

House Democratic Policy Committee Hearing

Protecting Consumers from Misleading Contracts

Monday, February 26, 2024 | 11:00 a.m.

Representative Paul Takac

OPENING REMARKS

11:00 a.m. Rep. Paul Takac, D-Centre

PANEL ONE

11:05 a.m. Sarah Frasch, Chief Deputy Attorney General
Bureau of Consumer Protection, PA Office of Attorney General

Q & A with Legislators

PANEL TWO

11:35 a.m. Heather Morton, Director of Financial Services, Tech & Communications
National Conference of State Legislatures

Q & A with Legislators

Chairman Bizzarro, Representative Takac and Members:

Thank you for allowing the Office of Attorney General, Bureau of Consumer Protection the opportunity to provide testimony regarding our efforts to tackle misleading contracts. My name is Sarah Frasch and I am the Director of the Bureau.

We often see complaints filed by consumers which evidence that the consumers did not fully understand the contracts when they signed them. My testimony today will discuss the types of contracts that tend to cause this type of confusion for consumers and the reasons why consumers often do not fully understand these types of contracts. Throughout, I will describe our enforcement efforts in attempting to rectify some of these issues in the marketplace.

First, many contracts today are considered continuity plans, negative option plans, free to pay plans, or other forms where the consumer signs up for one thing and then, by signing up, or taking some other sort of action, the consumer is then enrolled in a longer term contract. One example is a consumer has a 7-day trial for a streaming service, and then at the end of the trial period, if the consumer does not take affirmative steps to cancel, the consumer will be automatically enrolled in an annual subscription for which the consumer is obligated to pay a fee each month for a year. Another example is where the consumer signs up for a security alarm contract for one year, and the contract renews automatically for 5 years at the end of the first year, unless the consumer takes affirmative steps to cancel prior to the renewal.

These types of contracts can be confusing to consumers and some are misleading in how long the contract term is and what the consumer is actually signing up for when the contract is originally "signed" by the consumer. Depending on how clear and conspicuous the terms and conditions are, consumers may not be aware that by agreeing to accept a trial or free item, they are enrolling in a contract requiring payment unless they take affirmative steps to cancel. Consumers may also not be aware of how to cancel. Indeed, consumers may not even realize they were enrolled in a long-term plan until they review their credit card statement where the first charge is evidenced. At that point, it may be too late for the consumer to cancel at all, or to cancel without paying an early termination fee.

Pennsylvania does not have a specific statute dealing with negative options or long term automatic contract renewals such as in the alarm company space and trash collection space. And unfortunately, some of these renewal periods last 5 years with no ability to cancel absent a hefty cancellation fee, even if the consumer is moving and no longer needs the service. The terms of the contract should be presented in a clear and conspicuous manner so that the consumer can easily read and understand the length of the contract, the products/ services included, the cost, any fees associated with early termination, and how to cancel. Moreover, the means by which the consumer is required to cancel should not be onerous. For example, if the contract can be signed on the internet, cancellation should also be possible on the internet.

The Office of Attorney General has brought a number of legal actions to address these types of contracts, most recently and most notably, for example, the American Mint case. In this case, consumers were sent a postcard offering a coin for a nominal price, where the consumer was to complete information on the postcard, including credit card payment information for the coin, and then the consumer would send the card back to American Mint to receive their coin. Many consumers were not aware that if they did not cross out on the postcard a satisfaction guarantee statement that they would be sent additional coins and charged additional monies for those coins. The Attorney General filed a lawsuit against this company in 2021 and the litigation is ongoing. We are seeking injunctive relief, restitution, and civil penalties, among other things.

Another example of a legal action filed by the Office of Attorney General regarding negative options was the Internet Order case in which the business offered language-learning CDs for a minimal cost. The consumer would order the CDs on the business website, and by clicking the order button, the consumer had purportedly agreed to enroll in a language-learning plan in which the consumer would continue to receive CDs for a much higher price. Many consumers did not realize the additional CDs were being sent for additional fees until they received their credit card bill, at which point it was too late to cancel without incurring a charge. After suing this business and its principal, we entered into a settlement agreement, which included prescriptive injunctive relief for better disclosures regarding the contract terms and monetary relief of more than \$1 million.

Another source for confusion or misunderstanding in contracts relates to the legality and enforceability of the terms of the contracts. Consumers tend to assume that the terms of a contract must be legal and enforceable if a business is offering such a contract. But often times, contracts offered by businesses are rife with terms that are illegal, unenforceable, and against public policy. Consumers may not have the sophistication to reject these terms, and consumers often lack the bargaining power to negotiate the terms away.

Some examples of contracts that are misleading due to having illegal, unenforceable or other terms that are against public policy include leases with a requirement that repairs upon move-out be completed by the landlord's selected contractor; a contract that states if a consumer files a lawsuit against the business, regardless of the reason, the business's attorneys fees must be paid by the consumer; a lease that allows for self-help evictions without going through the formal eviction process with the courts; contracts which provide for very broad releases; and contracts which contain threats to consumers if consumers post negative reviews online about the business.

The Office of Attorney General has filed some legal actions regarding these issues, within the past few years. One example includes the lawsuit in 2019 against Legacy, a property management company, which had a variety of lease provisions which the lawsuit alleged were unenforceable, illegal, and against public policy such as charging a "fine" for certain lease violations, requiring tenants to repair normal wear-and-tear items, allowing the landlord to enter the unit without any notice at any time, and the ability of the management company to change the terms of the lease at any time without any ability for the tenant to seek advice from counsel. We resolved the lawsuit in 2023, in which Legacy paid a monetary amount toward restitution for tenants and agreed to no longer operate in Pennsylvania.

Another example of a lawsuit filed by the Office regarding these illegal contract provisions includes the action filed in 2019 against Matthew Barnes and his limousine service, in which we alleged that Mr. Barnes charged consumers a fee if they disputed their credit card charges or posted a negative review. Further, we alleged that these defendants failed to clearly disclose the terms of the contract. The case was resolved in 2020 through a settlement in which the defendants agreed to stop charging the illegal fees, and provide clearer disclosures of the contract terms, among other things. Last year, the Office also resolved a similar case involving a property management company that utilized leases charging 2 months' rent if a tenant posted a negative review online.

Another major contributing factor to consumer confusion and misunderstanding of contracts is the increasingly prevalent use of electronic signatures when signing contracts. Often times, the consumer is not presented with the full contract in a manner they can easily read and review it, and instead the sales people present the signature block on an iPad or other electronic device under the control of the sales person and request the consumer to sign right then and there.

The Office of Attorney General has filed legal actions regarding this electronic signature issue in both the Aptive case and the Terminix case in 2019. These investigations revealed that sales people went to people's homes, had consumers sign service contracts on the company's iPads, and consumers were never offered their contracts in writing to review prior to or after signing.

Another case involving the use of electronic signatures was the lawsuit filed against Snap Finance in 2020, where we alleged that consumers were presented with rental purchase agreements for their signature on retailers' electronic devices without being given the opportunity to review the terms first. Even worse, our lawsuit alleged that sometimes the agreements were signed by the retailers instead of the consumers due to the fact that the retailers had control of the electronic devices. As a result of the contracts being presented on the retailers' computers, the consumers often did not understand the true cost of the agreement. That case was settled in 2023 with a monetary payment of more than \$8 million and debt cancellation of more than \$3 million.

Another case involving electronic signatures is our lawsuit against installment lender Mariner Finance, which we filed in 2022. We allege that Mariner charged consumers for hidden add-on products that consumers either did not know about or did not agree to buy. Consumers left Mariner believing they had entered into an agreement to borrow and repay a particular dollar amount. In reality, because of the hidden add-ons, Mariner added hundreds to thousands of dollars to the loan amount. We allege that, at the in-branch closings, Mariner rushes applicants through an electronic display of 44-plus pages of loan documents on a hard-to-read computer screen mounted on the wall. Because consumers are not afforded the opportunity to adequately read and understand the purported disclosures contained in the electronic display of loan documents before signing, most consumers rely on the oral representations of Mariner employees to explain what the add-on products are and how they work. This lawsuit is moving towards trial.

Finally, another reason for confusion and misunderstanding includes business's use of contracts of adhesion, with provisions that allow for the business to change the terms or adopt new terms with little

to no notice and unilaterally with the consumer having no opportunity to decline. Sophisticated businesses with all the bargaining power bury these terms allowing for the changes to be made in the contracts, and the consumers are then stuck with contract terms they have no leverage to negotiate nor the ability to decline because they are already in the contract and because the consumers are receiving the goods or services. Such contracts are against public policy and take advantage of the unequal bargaining power between the business and consumer.

The information presented today are just some examples of the issues the Office of Attorney General, Bureau of Consumer Protection has seen over the past few years regarding misleading contracts, what makes them misleading, and the efforts made by the Office to address them. I am happy to respond to questions or provide further information on this topic as you may require. Thank you.



CONSUMER PROTECTION AND THE LEGISLATIVE LANDSCAPE

Democratic Policy Committee
Pennsylvania House of Representatives
Feb. 26, 2024



PRESENTATION AGENDA



- **NCSL Overview**
- **State Unfair or Deceptive Acts or Practices Overview**
- **Truth in Consumer Contracts**
- **Automatic Renewals and Negative Options**



STRENGTHENING THE LEGISLATIVE INSTITUTION

HOW NCSL STRENGTHENS LEGISLATURES



Policy Research

NCSL provides trusted, nonpartisan policy research and analysis



Connections

NCSL links legislators and staff with each other and with experts



Training

NCSL delivers training tailored specifically for legislators and staff



State Voice in D.C.

NCSL represents and advocates on behalf of states on Capitol Hill

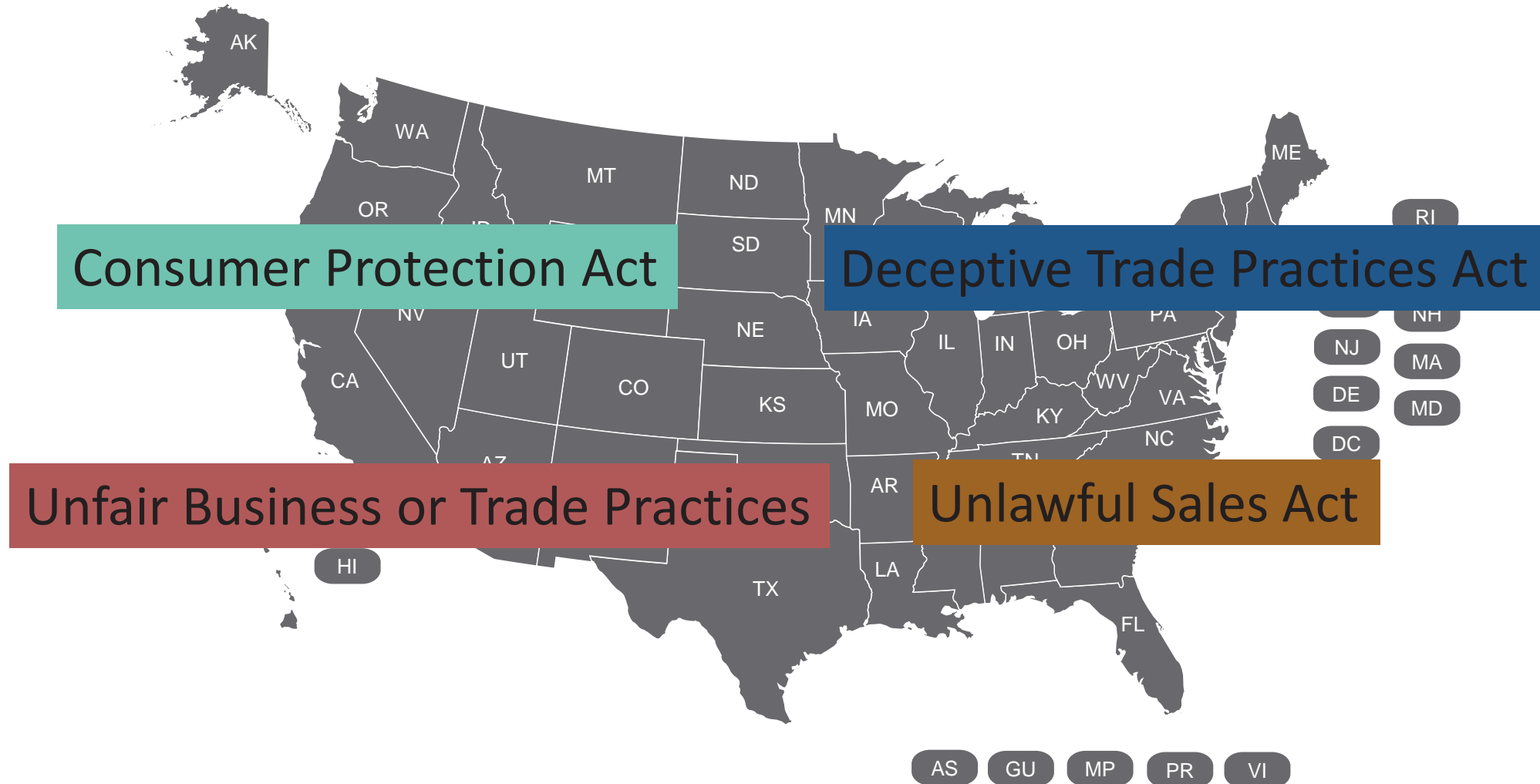


Meetings

NCSL meetings facilitate information exchange and policy discussions

UNFAIR OR DECEPTIVE ACTS OR PRACTICES

50 States, District of Columbia, Guam, Puerto Rico and U.S. Virgin Islands



TRUTH-IN-CONSUMER CONTRACT, WARRANTY AND NOTICE ACT

New Jersey Statute and Pennsylvania Legislation

New Jersey

N.J. Rev. Stat. §56:12-16

No consumer contract, warranty, notice or sign, as provided for in this act, shall contain any provision by which the consumer waives his rights under this act. Any such provision shall be null and void. No consumer contract, notice or sign shall state that any of its provisions is or may be void, unenforceable or inapplicable in some jurisdictions without specifying which provisions are or are not void, unenforceable or inapplicable within the State of New Jersey; provided, however, that this shall not apply to warranties.

Pennsylvania 2023-2024 HB 1087

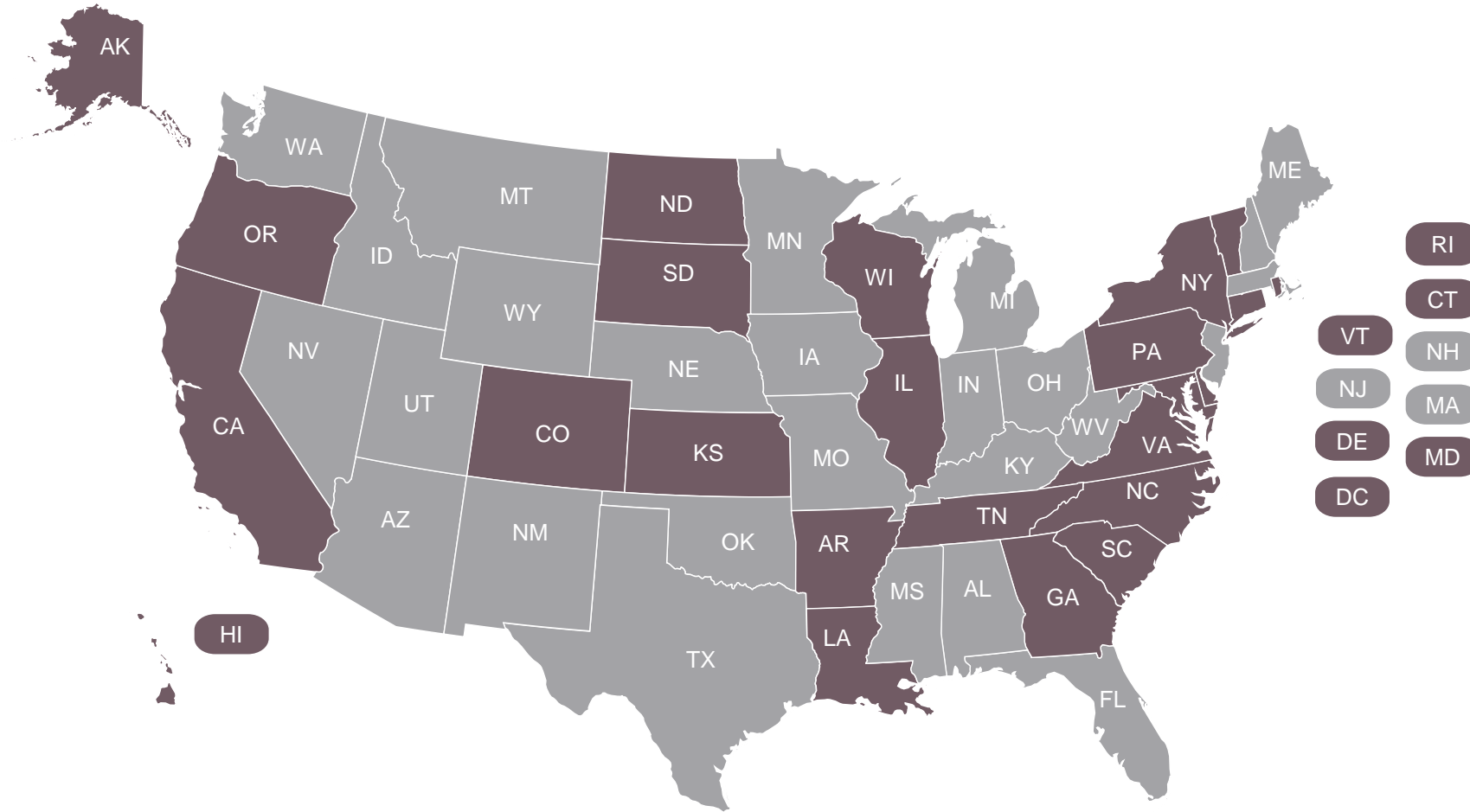
(4) "Unfair methods of competition" and "unfair or deceptive acts or practices" mean any one or more of the following:

* * *

(xxi) Using a contract for the sale of goods or services which states that any of the contract's provisions are or may be void, unenforceable or inapplicable in a jurisdiction without specifying which provisions are or are not void, unenforceable or inapplicable within this Commonwealth. This subclause shall not apply to a health club as defined under section 2 of the act of December 21, 1989 (P.L.672, No.87), known as the "Health Club Act."

AUTOMATIC RENEWALS AND NEGATIVE OPTIONS

General Consumer Goods and Services, Health Clubs, Telecommunications and Security Alarm Systems

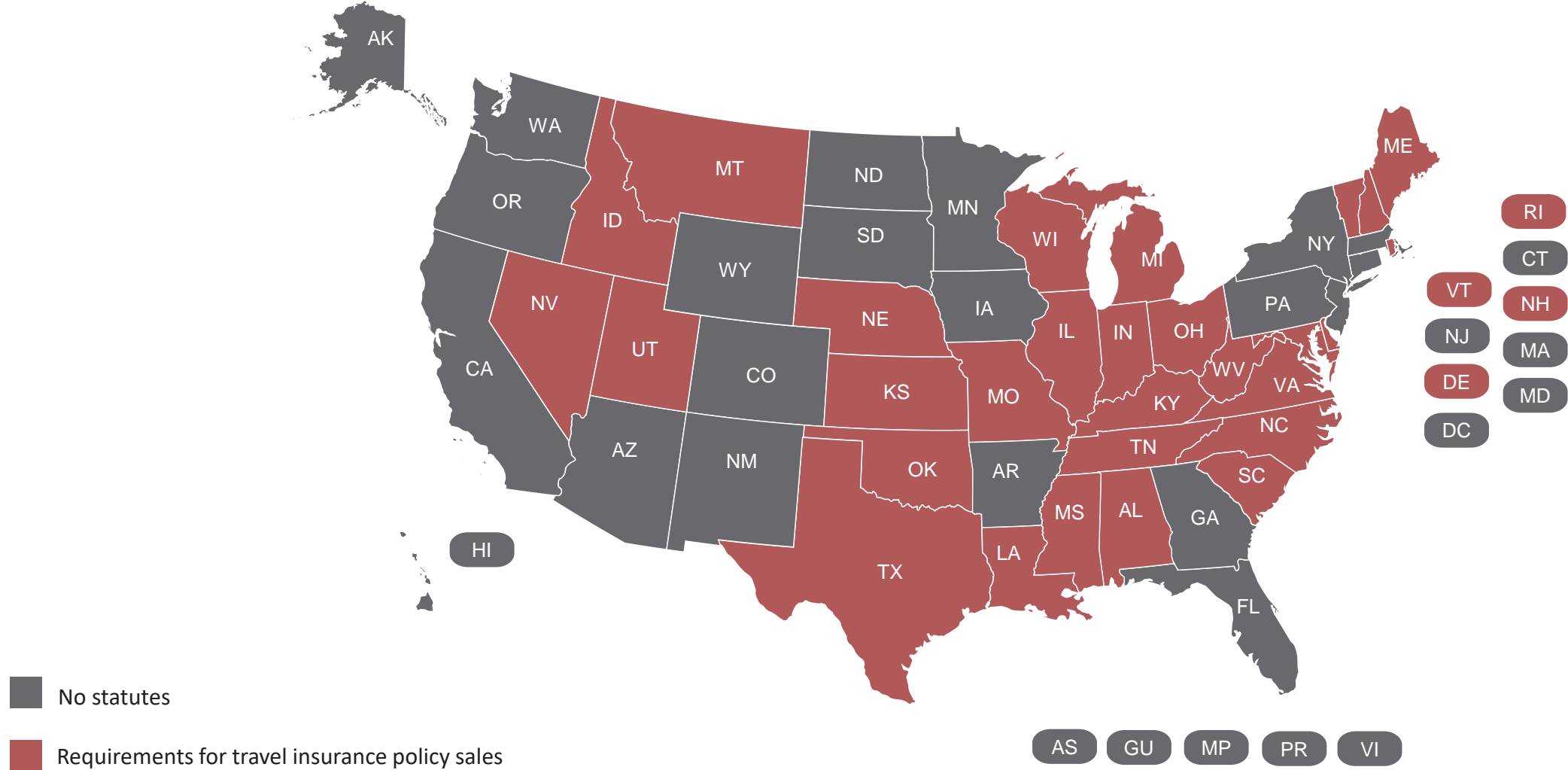


No statutes

Statutes governing general consumer goods and services, etc.

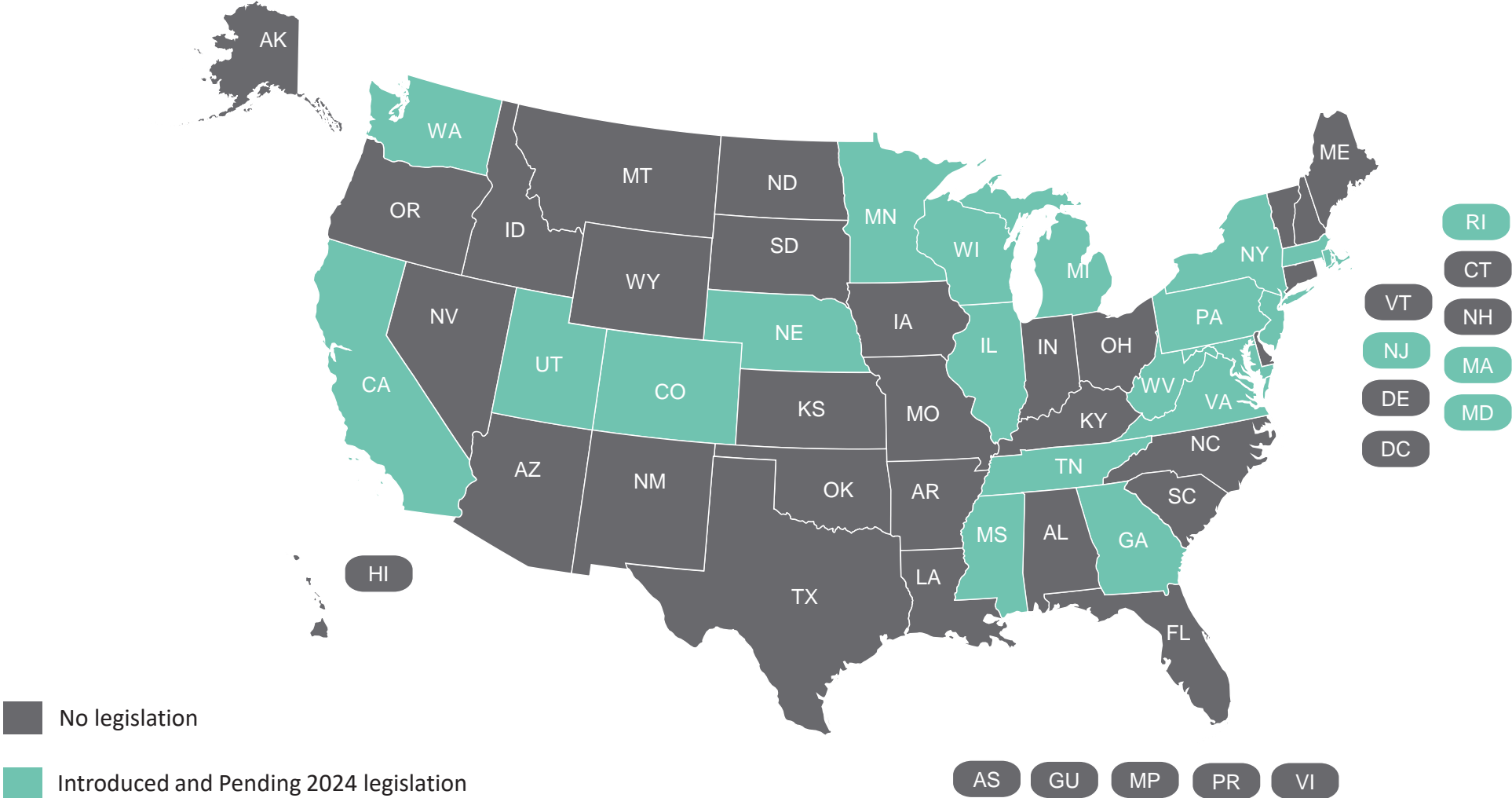
AUTOMATIC RENEWAL AND NEGATIVE OPTIONS

Travel Insurance Statutes



AUTOMATIC RENEWAL AND NEGATIVE OPTIONS

2024 Legislative Session



2024 Legislative Summit



Aug. 5-7, 2024

Easy ways to get involved



Contact your
dedicated NCSL
state liaison



Create an online
member account



Sign up for policy
newsletters



Connect with
@NCSLorg on social
media



Register for a policy
or training webinar
Listen to an NCSL
podcast



Read State
Legislatures News





Thank you for joining today!

Heather Morton

Director, Financial Services,
Technology and Communications

heather.morton@ncsl.org

303.856.1475



www.ncsl.org



@NCSLorg



Denver
7700 East First Place,
Denver CO 80230

Washington D.C.

444 North Capitol Street, N.W.
Suite 515,
Washington, D.C. 20001