

# From Safety to Subpoenas: A Quick Guide to the Mississippi Consumer Protection Act

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From subprime lenders to opioids and talc-containing products, the Mississippi Attorney General's Office (MSAGO) aggressively pursues the enforcement of consumer protection laws for all products sold in Mississippi. If your company sells or plans to sell products in Mississippi, knowledge of the Mississippi Consumer Protection Act (MCPA) is critical.

At its core, the MCPA prohibits the use of “[u]nfair methods of competition affecting commerce and unfair or deceptive trade practices in or affecting commerce.” See Miss. Code Ann. § 75-24-5(1). “Trade” and “commerce” are broadly defined as “the advertising, offering for sale, or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situated [...] and any trade or commerce directly or indirectly affecting the people of this state.” See Miss. Code Ann. § 75-24-3. Because of the expansive scope of the MCPA, corporations exposed to an investigation of or potential action by the MSAGO should proactively assess and address such risk.

The Consumer Protection Division of the MSAGO was created to administer the MCPA and is “authorized and empowered” to enforce the act whenever “[t]he Attorney General has reason to believe that any person is using, has used, or is about to use any method, act or practice prohibited by § 75-24-5[.]” See Miss. Code Ann. §§ 75-24-1, 75-24-9. Enforcement of the MCPA typically involves an action in the name of the state to restrain or prevent such violation of the act “by temporary or permanent injunction” and “assurance of voluntary compliance” between the MSAGO and the alleged offender. See Miss. Code Ann. §§ 75-24-9, 75-24-27. Penalties for violating an injunction issued under the MCPA, or for knowingly or willfully violating the MCPA, are up to \$10,000 per violation. See Miss. Code Ann. § 75-24-19.

To assist in enforcement efforts, the MCPA delineates certain additional powers of the MSAGO, including the issuances of subpoenas, subpoenas duces tecum, cease and desist orders, conduct hearings to investigate and “[c]ompel the production of books, papers, documents, and other evidence.” See Miss. Code. Ann § 75-24-27. These pre-litigation subpoenas are not self-executing, but the MCPA provides for a method of enforcement in chancery court. See Miss. Code Ann. § 75-24-17. A

company facing a subpoena may raise breadth and privilege issues in any such subpoena enforcement action.

These broad powers granted to the MSAGO leave corporations whose products are sold to Mississippi consumers vulnerable to potential actions and/or subpoenas relating to those products. The provisions of the MCPA apply to both Mississippi businesses and nonresident corporations whose products are sold to Mississippi consumers. This includes manufacturers, distributors, suppliers, and retailers. Although the United States Supreme Court has curtailed general jurisdiction in several recent cases, subpoenas issued or claims brought by the MSAGO are likely to satisfy specific jurisdiction because those claims relate to the products sold to Mississippi residents.

Corporations, both in Mississippi and outside of Mississippi, should be aware of the powers granted to MSAGO. The MSAGO has taken on the manufacturers and sellers of products ranging from tobacco to pharmaceuticals to cosmetics. Businesses must be proactive in responding to subpoenas and other requests from the MSAGO, while carefully preserving defenses that may be needed in future enforcement actions.