

# Regulatory Oversight Newsletter — December 2023

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## Regulatory Oversight Blog

Make sure to visit Troutman Pepper's [Regulatory Oversight](#) blog to receive the most up-to-date information on regulatory actions and [subscribe](#) to our mailing list to receive a monthly digest.

Regulatory Oversight will provide in-depth analysis into regulatory actions by various state and federal authorities, including state attorneys general and other state administrative agencies, the Consumer Financial Protection Bureau (CFPB) and the Federal Trade Commission (FTC). Contributors to the blog will include attorneys with multiple specialties, including regulatory enforcement, litigation, and compliance.

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## Regulatory Oversight Podcast

### GAME ON: NAVIGATING THE LEGAL LANDSCAPE OF SPORTS WAGERING

By [Stephen C. Pieprgrass](#), [Gene Fishel](#), and [Michael Lafleur](#)

In the latest episode of *Regulatory Oversight*, Gene Fishel and Mike Lafleur welcome Pat Moore and Jared Rinehimer from the Massachusetts Attorney General's (AG) Office to discuss online sports wagering. They cover the recently enacted Massachusetts Sports Wagering Act, the associated role of the Massachusetts Gaming Commission, related rules addressing advertising and data privacy, and the overall concerns of the AG's office.

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## Privacy Updates

### COLORADO AG RELEASES PERSONAL DATA UNIVERSAL OPT-OUT LIST FOR PUBLIC COMMENT

By [Troutman Pepper State Attorneys General Team](#)

Similar to other state consumer data protection acts enacted over the past two years, the Colorado Privacy Act (CPA) allows Colorado consumers to opt out of the sale of personal data and the processing of such data for targeted advertising purposes. Beginning on July 1, 2024, companies controlling personal data that fall within the

purview of the CPA must allow consumers to opt out via a universal opt-out mechanism (UOOM).

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## Labor Updates

### MASSACHUSETTS AG ANNOUNCES \$1.3M IN CITATIONS AGAINST LOCAL COMPANY FOR WAGE VIOLATIONS

By [Troutman Pepper State Attorneys General Team](#)

Massachusetts Attorney General (AG) Andrea Campbell recently [announced](#) a number of citations against Quick Temp., Inc. (the company), its owner, and its manager, for alleged wage, sick time, and records violations.

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### MASSACHUSETTS AG REACHES \$6.8M SETTLEMENT WITH OPERATOR OF MGM CASINO FOR ALLEGED VIOLATIONS OF STATE WAGE AND HOUR LAWS

By [Troutman Pepper State Attorneys General Team](#)

Massachusetts Attorney General (AG) Andrea Joy Campbell has [announced](#) a \$6.8 million [settlement](#) with the operator of an MGM resort and casino known as MGM Springfield for the entity's alleged violations of the Massachusetts Wage Act, Minimum Wage Law, Overtime Law, and the state's Earned Sick Time Law.

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## Consumer Protection Updates

### DELAWARE BANKRUPTCY COURT ENTERS \$30M STIPULATED JUDGMENT OVER DECEPTIVE STUDENT LOAN PRACTICES

By [Troutman Pepper State Attorneys General Team](#)

On November 20, Delaware Attorney General (AG) Kathy Jennings, along with the Consumer Financial Protection Bureau (CFPB) and 11 other states, [announced](#) a settlement in excess of \$30 million with Prehired LLC and affiliated debt collection companies. This settlement resolves allegations of unlawful practices in originating, servicing, collecting, and enforcing Income Sharing Agreements (ISAs) in violation of the Consumer Financial Protection Act of 2010, the Truth in Lending Act, and its implementing Regulation Z, and the Fair Debt Collection Practices Act. Specifically, regulators alleged in a July 2023 complaint that the ISAs were unlawful, and that Prehired and its affiliates made false promises of job placement and resorted to abusive debt collection practices when borrowers could not pay. As part of the [stipulated final judgment](#) entered by the Delaware bankruptcy court, Prehired is required to cease all operations, pay \$4.2 million in redress to students who made loan payments between 2019 and 2023, pay \$1 million to the CFPB victims relief fund, and void all of its outstanding ISAs, which are valued at nearly \$27 million.

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## **COLORADO AG SETTLES WITH DEBT MANAGEMENT COMPANY OVER FAILURE TO PROVIDE CUSTOMERS WITH SIGNED AGREEMENTS**

By [Troutman Pepper State Attorneys General Team](#)

On November 3, Colorado Attorney General (AG) Phil Weiser [announced](#) that his office reached a [settlement](#) with Touchstone Partners, Inc. (Touchstone), a noted debt management company. The AG's allegations were that Touchstone had violated the Colorado Debt Management Services Act (C.R.S. § 5-19-201 *et seq.*).

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## **MICHIGAN AG LAUNCHES INVESTIGATION INTO DECEPTIVE PRACTICES BY PEST CONTROL OPERATORS**

By [Troutman Pepper State Attorneys General Team](#)

Last week, Michigan Attorney General (AG) Dana Nessel formally launched an investigation under the Michigan Consumer Protection Act (MCPA) into the marketing and business practices of a group of interconnected pest control companies operating under various aliases across Michigan and surrounding states. As part of the investigation, civil subpoenas were served on Kyle Scappaticci, Emily Scappaticci, and Kevin Scappaticci, who allegedly run numerous pest and wildlife control businesses, including Pestway LLC, Michigan Wildlife Removal LLC, and Platinum Wildlife Removal LLC.

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## **VIRGINIA AG REMINDS SUPPLIERS: PRICE GOUGING LAWS IN EFFECT DUE TO WILDFIRES**

By [Troutman Pepper State Attorneys General Team](#)

On November 7, Virginia Attorney General (AG) Jason Miyares reminded suppliers that the current state of emergency caused by wildfires triggered Virginia's anti-price gouging statutes, which prohibit businesses from raising prices to "unconscionable" levels during an emergency.

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## **Election Updates**

### **2023 ELECTION UPDATE: REPUBLICANS MAINTAIN CONTROL IN KENTUCKY AND MISSISSIPPI AG RACES**

By [Troutman Pepper State Attorneys General Team](#), and [Zie Alere](#)

#### **Kentucky**

Russell Coleman (R), a Louisville attorney and former federal prosecutor, prevailed over Pamela Stevenson (D), member of the Kentucky House of Representatives, for District 43. Coleman will take over from departing attorney

general (AG) Daniel Cameron (R), who was unsuccessful in running for governor against incumbent Andy Beshear (D). Such an outcome suggests that prevailing political headwinds affect AGs differently — despite their overt party affiliations. Coleman will take over the AG post in December.

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## Environmental Updates

### **WISCONSIN DOJ SETTLES ENVIRONMENTAL ENFORCEMENT ACTION WITH TRUCKING COMPANY OVER ALLEGED WATER POLLUTION VIOLATIONS**

By [Troutman Pepper State Attorneys General Team](#)

On November 22, Wisconsin Attorney General (AG) Josh Kaul announced that his office settled a civil enforcement action against Paul Bugar Trucking, Inc. and its owner, Paul J. Bugar. Kaul alleged the defendants violated a Wisconsin Pollution Discharge Elimination System (WPDES) permit for the company's nonmetallic mining operations in Clark County, WI.

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### **EPA WITHDRAWS CYBERSECURITY RULE FOR PUBLIC WATER SYSTEMS**

By [Gene Fishel](#) and [Stephen C. Piepgrass](#)

The U.S. Environmental Protection Agency (EPA) has formally withdrawn cybersecurity rules it promulgated in March requiring that states report cybersecurity threats to their public water systems (PWS). The reversal comes in the wake of lawsuits filed in the Eighth Circuit in July by Missouri, Arkansas, and Iowa (the states), along with intervenors American Water Works Association and National Rural Water Association (the water associations). As a result of the withdrawal, the states and water associations filed to dismiss their suits.

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### **DELAWARE AG FILES PFAS SUIT AGAINST NUMEROUS COMPANIES**

By [Troutman Pepper State Attorneys General Team](#)

On October 26, Delaware Attorney General (AG) Kathleen Jennings filed a [lawsuit](#) against 14 chemical companies for allegedly contaminating the state's natural resources with per- and poly-fluoroalkyl substances (PFAS) traceable to the use and disposal of aqueous film-forming foam (AFFF), a specialized firefighting foam product widely used at airports and military bases. The suit is the result of an investigation that was conducted over a two-year timeframe that involved environmental sampling, forensic analysis, and a review of corporate records.

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### **OHIO AG SECURES \$16M CLEANUP OF HAZARDOUS GLASS**

By [Troutman Pepper State Attorneys General Team](#)

On October 19, Ohio Attorney General (AG) Dave Yost filed a [joint motion](#) to enter into a consent order with two Columbus, OH properties, Garrison Southfield Park, LLC, and Olymbec USA LLC, settling claims that Garrison and Olymbec were in violation of Ohio's hazardous waste pollution control laws. The consent order requires the two property owners to pay a \$250,000 civil penalty and properly close the cleaned-up sites.

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## State AG Updates

### **BIPARTISAN AG COALITION SIGNS AMICUS BRIEF ADVOCATING FOR THE US SUPREME COURT TO REVOKE MLB'S ANTITRUST EXEMPTION**

By [Troutman Pepper State Attorneys General Team](#)

A bipartisan coalition of 18 state attorneys general (AGs) led by Connecticut AG William Tong has signed an [amicus brief](#) urging the U.S. Supreme Court to overrule its 1972 *Flood v. Kuhn* decision and revoke the immunity from federal and state antitrust laws that the Court has uniquely granted to professional baseball for more than a century.

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### **CONNECTICUT AG ASSERTS CLAIM AGAINST NURSING SCHOOL OWNERS**

By [Troutman Pepper State Attorneys General Team](#), and [Chloe Ann Lee](#)

On October 23, an amended complaint was filed by the Connecticut Office of the Attorney General (AG), alleging that Stone Academy, a nursing school, and its owners, Joseph Bierbaum and Mark Scheinberg, used millions of dollars from nursing student tuition and fees to finance personal luxuries and other businesses operated by Stone Academy's owners.

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## Cannabis Updates

### **THE PROS AND CONS OF MARIJUANA DISPENSARIES USING CRYPTOCURRENCIES FOR PAYMENTS**

By Jean Smith-Gonnell and [Trey Smith](#)

The legal marijuana industry has grown rapidly in the U.S., with 38 states, three territories, and the District of Columbia legalizing its use for medical and/or recreational purposes. However, despite the industry's growth, marijuana businesses continue to face significant challenges with payment processing and banking, primarily due to the federal prohibition of marijuana. This conflict between federal and state laws has led to an exploration of alternative financial systems, including the use of cryptocurrencies.<sup>[1]</sup>

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## **GREEN IN A GRAY AREA: LESSONS FOR VIRGINIA CANNABIS ‘GIFTING’ BUSINESSES**

By Jean Smith-Gonnell, [Agustin Rodriguez](#), [Stephen C. Piepgrass](#), and [Zie Alere](#)

The cannabis space is young in Virginia, but valuable lessons from the past could provide an edge to those paying close attention.

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## **FEDERAL JUDGE SAYS VIRGINIA DID NOT OVERSTEP ITS AUTHORITY IN REGULATING INTOXICATING HEMP PRODUCTS**

By Jean Smith-Gonnell, [Agustin Rodriguez](#), [Michael Jordan](#), and Christina Sava

On October 30, Virginia’s hemp industry suffered an early [defeat](#) in its effort to overturn Virginia SB 903, a law that imposed stricter limitations on hemp products than what is currently required under federal law.

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## **TAGGING OUT: THE RFID DEBATE IN CANNABIS COMPLIANCE**

By Jean Smith-Gonnell and Cole White

The cannabis industry has witnessed significant growth in recent years, marked by the legalization of medical and/or recreational marijuana in 38 states, Washington D.C., and three territories. Alongside this expansion comes the need for robust regulatory frameworks to ensure compliance and safety within the industry. One such regulatory component that has stirred considerable debate over the years is the use of Radio Frequency Identification (RFID) tag technology in state track-and-trace systems. While RFID tags can offer significant benefits to both regulators and business owners when compared to traditional barcodes, the costs imposed on licensed businesses often outweigh the benefits that state regulators receive from requiring the use of the technology. In fact, in the Colorado Department of Revenue – Marijuana Enforcement Division’s (MED) latest draft rules governing the industry, the agency removed references to the requirements for RFID technology, a step that could signal the beginning of the end of state-mandated RFID tracking of cannabis products.

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## **THE CORPORATE TRANSPARENCY ACT AND ITS CONNECTION TO CANNABIS**

By Jean Smith-Gonnell and Carmen Williams

### **I. Introduction**

Effective on January 1, 2024, the Corporate Transparency Act (CTA) will require all nonexempt entities to report certain identifying information of its beneficial owners (as defined below) and company applicants (as defined

below) to the Department of Treasury's Financial Crimes Enforcement Network (FinCEN).

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## **HIGH STAKES: EIGHT TIPS (AND ONE BONUS) FOR CANNABIS PROFESSIONALS ON THE BUDDING WORLD OF TRADEMARKS**

By [Michael Hobbs](#), Jean Smith-Gonnell, and [Brooke Watson](#)

Apologies for the cannabis puns in the title, but they are required by law. Okay, you are correct. That is not true. But it is true that trademark protection is important for individuals in the cannabis industry. Earlier this month, Ohio became the 24<sup>th</sup> state in the U.S. to legalize recreational marijuana. As more states pass laws to legalize marijuana, the conversation returns to the likelihood that Americans might see a law with nationwide reach. A federally applicable law (or lack thereof) becomes significant in the context of obtaining a trademark registration for cannabis products and services. Even if the products or services are legal under state law, the U.S. Patent and Trademark Office (USPTO), which oversees the registration of federal trademarks, requires that use of the mark be federally lawful before it will issue a federal trademark registration.

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Stephanie Kozol, Senior Government Relations Manager – State Attorneys General, also contributed to this newsletter.

*Our Cannabis Practice provides advice on issues related to applicable federal and state law. Marijuana remains an illegal controlled substance under federal law.*

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