Articles + Publications | December 2024

Regulatory Oversight Newsletter — December 2024

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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.

Podcast Updates

THE 12 DAYS OF REGULATORY INSIGHTS

Starting tomorrow, be on the lookout for our special holiday series, "*The 12 Days of Regulatory Insights*," part of our Regulatory Oversight podcast. This 12-part series will cover a variety of critical regulatory topics, offering concise and insightful discussions from members of our Regulatory Investigations, Strategy + Enforcement practice group and State Attorneys General team. We will also feature guest commentary from several esteemed colleagues in other areas of the firm, as well as members of Locke Lord's firm. Don't miss this opportunity to gain valuable insights from industry experts.

EMERGING TRENDS IN CONSUMER PROTECTION: A CONVERSATION WITH NAAG'S KATE DONOVEN

By Clayton Friedman and Stephen C. Piepgrass

In this episode of *Regulatory Oversight*, Clay Friedman, co-leader of the firm's State Attorneys General team, welcomes Kate Donoven, consumer counsel at the National Association of Attorneys General (NAAG). The conversation highlights Kate's extensive career in consumer protection, her transition to NAAG, and the emerging trends and initiatives in consumer protection.

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FTC Updates

CONSUMER ADVOCACY GROUPS URGE FTC TO ADDRESS SOFTWARE TETHERING ISSUES

By Stephen C. Piepgrass, Daniel Waltz, and Nick Gouverneur*

The Internet of Things (IoT) represents a transformative shift in how consumers interact with technology, integrating physical devices with sophisticated services to create interconnected ecosystems. As the adoption of IoT devices skyrockets, with projections estimating 75 billion connected devices by 2025, the legal landscape surrounding these hybrid transactions — comprising goods, software, and services — remains unsettled. Traditional legal frameworks, such as the Uniform Commercial Code (UCC), struggle to address the complexities of IoT transactions. Consumer advocacy groups are increasingly calling for regulatory intervention to protect consumers from emerging issues, considering a legislative landscape that is not keeping pace with rapidly evolving technology.

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STATE AGS CRACK DOWN ON CHARITY FRAUD

By Troutman Pepper State Attorneys General Team

On October 25, Pennsylvania Attorney General (AG) Michelle Henry announced a court order requiring the pastor and founder of Peniel Christian Fellowship International to pay $305,704 in restitution for allegedly misusing ministry funds for personal expenses. The AG took action alleging that charitable donations to the church were diverted into the pastor's personal accounts to pay for rent, vehicles, and other private expenses.

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Government Contracts Updates

CONTRACTORS OPPOSE THE "RIGHT TO REPAIR" MANDATE PROPOSED UNDER NDAA 2025

By Stephen C. Piepgrass, Hilary Cairnie, Daniel Waltz, and Nick Gouverneur*

The National Defense Authorization Act (NDAA) for 2025 includes a mandate that contractors furnish information and documentation to enable the military to modify and repair equipment and systems. Not surprisingly, industry is pushing back on that mandate. On September 25, Senator Elizabeth Warren (D-MA) sent a letter to various industry associations, questioning their motives to prevent a right-to-repair requirement that the Senate included in its proposed defense budget for fiscal year (FY) 2025. Warren also sent a separate letter to Secretary of Defense Lloyd Austin, expressing concern about contractual restrictions that void contractor warranties when third parties perform repairs and that prevent access to operations, maintenance, integration, and training data.

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Gaming Updates

MISSOURI LEGALIZES SPORTS BETTING

By Stephen C. Piepgrass and Natalia Jacobo

Among the several provisions on the ballot in the recent election, Missouri citizens voted for Amendment 2, which will legalize online and retails sports betting. The amendment won by a small margin of less than 7,500 votes.

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TRENDS IN IGAMING, CYBER SECURITY AND REGULATORY DEVELOPMENTS

By Stephen C. Piepgrass

Stephen Piepgrass, practice group leader of the firm's Regulatory Investigations, Strategy + Enforcement Practice Group, appeared in the November 13, 2024 *Nasdaq Trade Talks* video, "Trends in iGaming, Cyber Security and Regulatory Developments."

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State AG Elections

2024 STATE AG ELECTION RE-CAP: WHERE THINGS STAND THE DAY AFTER ELECTION DAY

By Troutman Pepper State Attorneys General Team

Of the 43 elected state AGs, 10 states held elections in 2024. Below are the current results of the elections for each of the 10 races. These elections have resulted in new attorneys general in North Carolina, Oregon, Pennsylvania, Utah, Washington, and West Virginia.

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Other State AG Updates

MARYLAND AG CREATES OFFICE OF THE SOLICITOR GENERAL

By Troutman Pepper State Attorneys General Team

On November 10, Maryland Attorney General (AG) Anthony G. Brown announced the creation of an Office of the Solicitor General within his office. This new division is dedicated to overseeing the state's appellate litigation in both state and federal courts. Brown appointed Julia Doyle, a seasoned appellate litigator and current chief of the Office of AG's Civil Division, as the new solicitor general, effective January 8.

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KENTUCKY AG CHECKS THE BOARD OF PHARMACY'S REGULATORY POWER

By Troutman Pepper State Attorneys General Team, Erin Whaley, and Kevin Miserez

On November 12, the Kentucky Attorney General (AG) issued a formal opinion, concluding that the Kentucky Board of Pharmacy lacks the authority to regulate nonresident pharmacists beyond what is specified in KRS Chapter 315. The board cannot mandate Kentucky licensure for nonresident pharmacists, except for the pharmacist-in-charge per KRS 315.0351(1)(g). Therefore, the board's proposed amendment to 201 KAR 2:030, which would require all out-of-state pharmacists filling prescriptions for Kentucky residents to be licensed in Kentucky, exceeds the board's statutory authority.

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DOORDASH SETTLES ILLINOIS' INVESTIGATION INTO ALLEGEDLY MISLEADING TIP POLICY

By Troutman Pepper State Attorneys General Team and Dascher Pasco

On November 8, Illinois Attorney General (AG) Kwame Raoul and DoorDash, Inc. (DoorDash) reached a settlement to resolve a lawsuit accusing DoorDash of violating Illinois consumer protection law related to alleged misrepresentations regarding tips for delivery drivers. The tipping policy in question was in place between 2017 through 2019.

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CONNECTICUT AG SETTLES LAWSUIT AGAINST BANKRUPT SOLAR INSTALLATION FIRM FOR $5M

By Troutman Pepper State Attorneys General Team and Amy Pritchard Williams

On October 11, Connecticut Attorney General (AG) William Tong announced a $5 million settlement against bankrupt solar installation firm Vision Solar, LLC to resolve an unfair trade practices suit. Hartford Superior Court Judge Daniel Joshua Klau granted the state's motion for the judgment, which was executed with a trustee for the company and previously approved by a U.S. bankruptcy court. In addition to the $5 million civil penalty, the company also agreed in the stipulation to certain changes in its business practices. However, the changes to its business practices are largely theoretical given that the company is in a liquidation bankruptcy.

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Tobacco Updates

OREGON APPEALS COURT RULES E-CIGARETTE PACKAGING RESTRICTIONS UNCONSTITUTIONAL

By Agustin Rodriguez and Zie Alere

In October, the Oregon Court of Appeals ruled that a law restricting the packaging of e-cigarettes violates the state constitution's free speech protections. The decision illustrates the utility of free speech arguments against packaging requirements and the importance of state constitutions in regulatory challenges generally.

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CALIFORNIA AG PROVIDES UPDATE ON STATE TOBACCO ENFORCEMENT EFFORTS

By Bryan Haynes and Nick Ramos

Last month, California Attorney General (AG) Rob Bonta announced the awardees for the 2024-2025 Tobacco Grant Program, a program spearheaded by the California Department of Justice (DOJ) that aims to support local law enforcement agencies in their efforts to reduce illegal tobacco sales and usage, particularly among minors. Bonta also provided an update on "Operation Up in Smoke," a comprehensive law enforcement operation targeting illegal tobacco sales. These updates illustrate that California continues to prioritize coordinated law enforcement efforts against businesses that make illegal tobacco sales, particularly to minors.

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Cannabis Regulatory Updates

COLORADO SPRINGS NARROWLY LEGALIZES RECREATIONAL CANNABIS SALES, BUT QUESTIONS STILL REMAIN

By Jean Smith-Gonnell and Cole White

This year's election saw no shortage of surprises at the federal, state, and local levels, and Colorado Springs, CO was no exception. Although the results have yet to be officially certified, it appears that voters have approved an initiative that would authorize recreational cannabis sales in the city. Colorado Springs has long stood as one of the major hold outs of recreational cannabis legalization in Colorado, due largely in part to its community of active service members. Alongside the recreational sales authorization, a separate ballot measure that would have amended the city's charter to *prohibit* any recreational sales within the city failed by only 1%. That slim margin, coupled with continued legal uncertainty, may foreshadow a tumultuous implementation process.

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FIRST CIRCUIT GREENLIGHTS FEDERAL PROSECUTION OF MAINE COUPLE IN CANNABIS CASE

By Jean Smith-Gonnell and Carmen Williams

In a pivotal ruling issued on October 15, the U.S. Court of Appeals for the First Circuit affirmed the district court's decision to deny a motion filed by Lucas and Alisa Sirois, a Maine couple accused of operating an illegal marijuana cultivation and distribution network, to end federal prosecution against them. The ruling is significant not only because of its direct impact on the Siroises but also due to its broader implications for the ongoing tension between state and federal cannabis laws. The case underscores the legal complexities at the intersection of state and federal marijuana laws and provides additional clarity on the confines of the Rohrabacher-Farr Amendment.

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

Nick Gouverneur also contributed to this newsletter. He is not licensed to practice law in any jurisdiction; bar

admission pending.

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

RELATED INDUSTRIES + PRACTICES

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