

Regulatory Oversight Newsletter — January 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.

REGULATORY OVERSIGHT PODCAST

EXPLORING THE FUTURE OF OPEN BANKING: A DISCUSSION ON CFPB'S 1033 PROPOSED RULE

By [Ashley L. Taylor, Jr.](#), [Kim Phan](#), and Kristen Eastman

In the latest episode of *Regulatory Oversight*, Ashley Taylor is joined by his colleagues Kim Phan and Kristen Eastman to discuss the Consumer Financial Protection Bureau's (CFPB) 1033 proposed rule, also known as the Personal Financial Digital Rights rule. This rule, part of the Dodd-Frank Act, aims to place limits on the ability to access consumer data as well as any subsequent uses of such data. It focuses on entities subject to the Truth in Lending Act (TILA) and Regulation Z, such as depository institutions, credit card companies, and payment processors. The proposed rule requires these entities to make financial records available both to consumers and their authorized third parties.

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BUDDING REGULATIONS: NAVIGATING THE CANNABIS REGULATORY LANDSCAPE

By [Stephen C. Piepgrass](#), [Jean Smith-Gonnell](#), and Cole White

In the latest episode of *Regulatory Oversight*, Troutman Pepper RISE attorneys Jean Gonnell and Cole White are joined by AGA's Bruce Turcott, legal editor of the *Cannabis Law Deskbook*, to discuss the evolution of cannabis

regulation in Colorado and Washington, the first two states to legalize marijuana. They discuss the challenges and successes of implementing cannabis laws, including the development of licensing systems, the impact of local authority on licensing, and the role of receiverships in the industry.

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FDA UPDATES

FDA MAINTAINS HEIGHTENED ENFORCEMENT AGAINST SELLERS OF ILLEGAL E-CIGARETTES

By [Bryan Haynes](#), [Agustin Rodriguez](#), [Michael Jordan](#), and [Zie Alere](#)

In December, the U.S. Food and Drug Administration (FDA) [issued warning letters](#) to online retailers for reportedly selling unauthorized e-cigarette products. Consistent with the Center for Tobacco Products' (CTP) [recent focus](#), the letters target unauthorized products, which FDA [states](#) are particularly appealing to youth — including Lost Mary, Funky Republic/Funky Lands, and Elf Bar/EB Design. These warning letters follow FDA's recent issuance of civil money penalty [complaints](#) against 25 brick-and-mortar retailers for failing to comply with prior warning letters. Those civil money penalty complaints, which we previously discussed [here](#), continued the agency's [approach](#) of seeking the maximum penalty approved by law.

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PUBLIC RECORDS UPDATES

VIRGINIA APPEALS COURT TO RULE ON ATTORNEY-ONLY PUBLIC RECORDS ACCESS LIMIT

By [Stephen C. Piepgrass](#) and Whitney Shephard

Since 1967, the federal Freedom of Information Act (FOIA) has provided the public with the right to access records or information from any federal agency, except those records protected under legal exemptions. Each state has implemented its own public records laws, with differences regarding how such records are retained and who they can be shared with, as well as nuances among state guidelines for response times, exemptions, fees, and which branches of government are included.

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DATA + PRIVACY UPDATES

ILLINOIS SUPREME COURT RULES THAT HEALTH CARE WORKER FINGER SCANS ARE EXEMPT FROM BIPA

By John Sample and [Molly DiRago](#)

On November 30, the Illinois Supreme Court unanimously [ruled](#) that the Biometric Information Privacy Act (BIPA) does not apply to health care workers whose fingerprints are collected, stored, and used to access medication and medical supplies.

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NAVIGATING THE COMPLEXITIES OF REGULATORY DATA INCIDENT INVESTIGATIONS

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

It is indeed a tangled regulatory web woven to potentially trap an organization in the wake of a data incident. Navigating this web can involve significant resources, time, and stress. As we discussed in part two of this series, “[Your organization has suffered a data incident: Now here are the regulators it will likely encounter](#),” *Reuters Legal News* and *Westlaw Today*, Oct. 16, 2023, there is no shortage of regulators likely to come calling. Organizations therefore have little margin for error when assessing and responding to an incident.

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ENVIRONMENTAL UPDATES

FLORIDA AG DOUBLES DOWN ON SOLAR ENFORCEMENT WITH LAWSUITS AGAINST VISION SOLAR AND SETUP MY SOLAR

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

On the heels of its recent lawsuit filed against MC Solar, Florida Attorney General (AG) Ashley Moody filed two additional lawsuits against Vision Solar and SetUp My Solar for allegedly deceiving Floridians in violation of Florida’s Deceptive and Unfair Trade Practices Act. The lawsuits follow Moody’s investigations into the companies, which allegedly revealed that the companies misled consumers about solar panel system installation processes, pricing, and incentives, and caused property damage.

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OHIO AG AND DUPONT REACH \$110M SETTLEMENT OVER CHEMICAL CONTAMINATION

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

On November 29, Ohio Attorney General (AG) Dave Yost and Governor Mark DeWine announced a proposed \$110 million settlement with Du Pont De Nemours and Co. and The Chemours Company over alleged chemical contamination from DuPont’s Washington Works facility in Parkersburg, WV, right across the border from Washington County, OH.

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FEDERAL COURT REMANDS PFAS LAWSUIT BY MICHIGAN AG AGAINST THE GERALD R. FORD INTERNATIONAL AIRPORT AUTHORITY

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

A federal judge has denied the [Gerald R. Ford International Airport Authority](#)’s attempt to move an environmental

lawsuit to federal court to be filed by Michigan Attorney General (AG) Dana Nessel, alleging that per- and polyfluoroalkyl substance (PFAS) releases by the airport authority contaminated the regional drinking water supply.

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STATE AG UPDATES

RHODE ISLAND AG SEEKS TO AMEND COMPLAINT FILED AGAINST SOLAR COMPANY IN DECEPTIVE TRADE PRACTICE ACT CASE

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

Rhode Island Attorney General (AG) Peter F. Neronha and his office filed a motion on November 30, to amend and supplement their complaint against Smart Green Solar, LLC (Smart Green) and its CEO, Jasjit Gotra, for allegedly violating the Rhode Island Deceptive Trade Practice Act. The proposed amended complaint builds on the allegations the office made in June, identifies additional alleged illegal conduct, and adds two more company executives, Christopher Schiavone and George Nixon, as individually named defendants.

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MASSACHUSETTS AG PROPOSES NEW REGULATIONS AGAINST HIDDEN “JUNK” FEES

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

While the federal government’s campaign against hidden “junk” fees intensifies, state attorneys general ([AGs](#)) [have long been contesting](#) concealed costs as unfair or deceptive — especially in the absence of sufficient disclosures. Energized by a surge in enforcement activity targeting junk fees, Massachusetts AG Andrea Campbell [proposed new regulations](#) aimed at prohibiting “junk fees” in Massachusetts. The term “junk fees” generally refers to additional charges imposed on consumers that are often unrelated to the actual cost of goods or services such as processing fees, convenience charges, or mandatory resort fees. Sometimes “junk fees” can also refer to a practice called “drip pricing” where a company advertises an initial low price to attract consumers but gradually reveals additional mandatory fees during the booking or purchasing process, providing the consumer with a false impression of the true cost.

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RENT-A-CENTER REACHED \$8.75M SETTLEMENT WITH MASSACHUSETTS AG

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

On November 28, Massachusetts Attorney General (AG) Campbell reached an \$8.75 million settlement with Rent-A-Center (RAC), the nation’s largest rent-to-own company specializing in consumer goods leases. The settlement aimed to resolve allegations that the company engaged in a pattern of unfair and deceptive practices against consumers in violation of Massachusetts consumer protection laws.

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OREGON AG ELLEN ROSENBLUM ASSUMES NAAG PRESIDENCY

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

Oregon Attorney General (AG) Ellen Rosenblum is taking over the helm of a crucial national organization that supports the important work of AGs across America. Rosenblum was recently elected president of the National Association of Attorneys General (NAAG), a nonpartisan group that serves as a forum for collaboration and resource-sharing among the states' top legal officers.

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STATE AGS WRITE AMICUS BRIEF ARGUING NASDAQ DIVERSITY RULE IS UNCONSTITUTIONAL

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

Republican attorneys general (AGs) from 19 states, led by Utah AG Sean D. Reyes, filed an amicus brief urging the Fifth Circuit to rehear a case after a panel of judges declined to entertain a lawsuit challenging diversity rules. The lawsuit was filed by two conservative groups, the Alliance for Fair Board Recruitment and National Center for Public Policy Research, in their attempt to overturn a Nasdaq rule that requires companies to disclose board diversity data. The AGs argue that the rule, which was approved by the Securities Exchange Commission (SEC), violates the Constitution's equal protection clause and could undermine state law and policy on corporate board composition and racial and gender preferences.

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CANNABIS UPDATES

WHEN GREEN GOES UP IN SMOKE: UNRAVELING THE POWER TUSSLE BETWEEN STATE AND LOCAL AUTHORITIES IN MARIJUANA REGULATION

By Jean Smith-Gonnell and [Dascher Pasco](#)

Recently, the City of Denver's Department of Public Health and Environment (DDPHE) ordered, among other things, the destruction of Titan Health LLC's (Titan Health) marijuana plants that it deemed to "hav[e] evidence of spider mite influx." Titan Health appealed the DDPHE's Notice of Violation (NOV), not only due to the lack of evidence warranting such an extreme remedy, but also because the NOV exceeded the City of Denver's authority. In fact, according to Titan Health, Colorado state law specifically preempted the NOV. While the merits of the appeal were not ultimately heard, this case exemplifies the importance of understanding state preemption and the limitations placed on localities' authority.

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HHS RELEASES HIGHLY REDACTED RESCHEDULING LETTER TO DEA: AN ANALYSIS OF EXEMPTION 5 TO FOIA

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

The principle of open government is foundational to a healthy democracy, and the availability of government records upon request from the public is one of its chief cornerstones. In the U.S., the primary mechanism by which the public gains access to government records is the Freedom of Information Act (FOIA). FOIA serves as a pivotal tool for ensuring governmental transparency by allowing the public to make requests to governmental entities to access specific government records.

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GEORGIA'S MEDICAL MARIJUANA PROGRAM: DEA BUSTS THE LOW-DOSE THC PARTY BEFORE IT STARTS

By Jean Smith-Gonnell, [Agustin Rodriguez](#), and [Carmen Williams](#)

Despite the federal ban on the sale, use, and possession of cannabis in the U.S., in October, Georgia became the first U.S. state to allow pharmacies to sell low-dose tetrahydrocannabinol (THC) products. Pursuant to statutes passed by the Georgia General Assembly in 2019, certain Georgia pharmacies approved by the Georgia Board of Pharmacy, are permitted to sell low-dose THC products containing up to 5% THC, the intoxicating component found in the cannabis plant. The 5% cap is far lower than the allowable THC levels in most states.

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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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