

# Regulatory Oversight Newsletter — July 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.

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## Podcast Updates

### GEORGIA ON MY MIND: ON THE FRONTLINES OF FEDERAL RULEMAKING WITH AG CARR

By [David Dove](#)

In the latest episode of *Regulatory Oversight*, Troutman Pepper partner David Dove welcomes Georgia Attorney General (AG) Chris Carr to discuss AG Carr's unique approach to his role. His work is shaped by his experience in the legislative side and economic development, emphasizing the importance of problem-solving and fostering a pro-business environment in Georgia.

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## Technology Updates

### DOJ ADDRESSES PRICING TECHNOLOGIES

By [Stephen Piepgrass](#), [Michael Yaghi](#), and [Abby Hylton](#)

In a recent interview, Jonathan Kanter, the U.S. Assistant Attorney General for the U.S. Department of Justice (DOJ) Antitrust Division, shared his thoughts on the use of technology in setting and advertising prices.

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## Gaming Updates

### SUPREME COURT DECLINES TO HEAR CHALLENGE TO FLORIDA'S GAMING COMPACT – SOLIDIFYING STATES' RIGHTS TO REGULATE GAMING OUTSIDE TRIBAL LANDS

By [Stephen Piepgrass](#), [Dascher Pasco](#), and [Daniel Waltz](#)

A gambling compact between the state of Florida and the Seminole Tribe of Florida, which allows for sports betting off tribal lands, will remain in place after the U.S. Supreme Court denied a petition for review filed by Florida casino operators. This decision will have a significant impact on states' authority to regulate gambling, especially gambling facilitated by Indian Tribes, moving forward.

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## Election Law Updates

### NEW YORK AG PROPOSES RULES FOR PRECLEARANCE UNDER THE NEW YORK VOTING RIGHTS ACT

By [Misha Tseytlin](#), [Abby Hylton](#), [Carson Cox](#), and Sean Dutton

On June 12, the Office of the New York State Attorney General (AG) [proposed a new rule](#) related to the New York Voting Rights Act (NYVRA).

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## Dear Mary Advice Column

### CAN VENDORS NOTIFY AFFECTED INDIVIDUALS ON BEHALF OF BUSINESSES AFTER A DATA BREACH?

By **Troutman Pepper**

Dear Mary,

We were recently impacted by a vendor incident, and the vendor is offering to provide notice to the impacted individuals on our behalf. That sounds like great news to us, but is this something we can and should consider?

– Potentially Optimistic in Miami

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### HOW TO RESPOND WHEN YOUR SERVICE PROVIDER SUFFERS A CYBERATTACK

By **Troutman Pepper**

Dear Mary,

One of our critical service providers recently suffered a cyberattack. It's all over the news, and our business operations are severely impacted. We're losing money every day, and we have no idea how long this will last. Do you have any suggestions on what to do? The lack of information from our service provider is incredibly frustrating.

– Frustrated in Dallas

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## **UNDERSTANDING REGULATORY RESPONSE TIMES FOLLOWING A CYBERSECURITY INCIDENT**

By **Troutman Pepper**

Dear Mary,

We received a data request from Health and Human Services, Office for Civil Rights, today. It was in connection with a data security incident that happened almost a year ago. Is this normal? Should this impact how we respond?

– Not Forgotten in New Orleans

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## **DOES EVERY INCIDENT REQUIRE A FORENSIC REPORT?**

By **Troutman Pepper**

Dear Mary,

We had a security incident a few weeks backs that luckily turned out to be nothing. I'll tell you, tension was high around here while the investigation was ongoing because there was a possibility that it was going to be bad. The forensic firm (hired by our outside counsel) figured out that the incident resulted from a misconfiguration in our MFA. We fixed that and now I'm wondering whether we really need a forensic report given the limited impact. I am not sure I understand the need.

– Uncertain in Atlanta

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## **State Regulatory Privacy Updates**

### **CALIFORNIA REGULATORS SETTLE WITH KIDS GAMING APP**

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

California Attorney General (AG) Rob Bonta and Los Angeles City Attorney Hyde Feldstein Soto recently settled a lawsuit with Tilting Point Media, LLC (Tilting Point) related to a SpongeBob Square Pants-themed app. In the complaint, Tilting Point is accused of collecting, using, and sharing the personal information of children in violation of the Children's Online Privacy Protection Act (COPPA).

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## **TEXAS AG LAUNCHES DATA PRIVACY TEAM**

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

On June 4, Texas Attorney General (AG) Ken Paxton announced the creation of a team dedicated solely to the prosecution and enforcement of Texas' privacy laws. The team will focus on handling cases under at least seven different laws, including the state's relatively new comprehensive consumer privacy law, and will be part of the office's Consumer Protection Division. In his announcement, the AG touts the team as the largest such unit in the U.S., and one that will aggressively enforce the state's privacy laws.

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## **Financial Services Updates**

### **NEW YORK AG SUES \$1B CRYPTO FIRMS ALLEGEDLY ENGAGED IN FRAUDULENT SCHEMES**

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

On June 6, New York Attorney General (AG) Letitia James filed suit against NovaTech Advisors, LLC, AWS Mining Pty Ltd., and several other entities, alleging the defendants orchestrated two consecutive, fraudulent cryptocurrency schemes that largely targeted Haitian nationals. Defendants Cynthia Petion and Eddy Petion allegedly defrauded investors of tens of millions of dollars by promising large returns in WhatsApp group chats and social media advertisements in Haitian creole by appealing to religious beliefs. The action highlights the regulation-by-enforcement nature of the cryptocurrency industry, and underscores the need for comprehensive, consistent regulation.

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### **CALIFORNIA AG LEADS MULTISTATE EFFORT TO SUPPORT CFPB'S REGISTRY FOR CORPORATE OFFENDERS**

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

California Attorney General (AG) Rob Bonta, along with a coalition of AGs, has submitted a letter to the Consumer Financial Protection Bureau (CFPB) regarding a proposed final rule. This rule aims to establish a registry of nonbank entities that have been subject to orders related to consumer protection law violations.

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## Tobacco Regulatory Updates

### FDA UNAUTHORIZED ENDS ENFORCEMENT: 2024 MID-YEAR ROUNDUP

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

In the first half of 2024, the U.S. Food and Drug Administration (FDA) has continued to ramp up efforts to limit sales of unauthorized electronic nicotine delivery systems (ENDS). We previously [reported](#) on FDA's heightened enforcement against sellers of unauthorized ENDS in 2023 and predicted that this pattern of enforcement would continue. A year-to-date review of 2024 shows that FDA is placing a high priority on action against unauthorized ENDS.

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### SAN FRANCISCO SUES E-CIGARETTE DISTRIBUTORS FOR VIOLATING LOCAL FLAVOR BAN

By [Bryan Haynes](#) and [Nick Ramos](#)

We have previously reported on the proliferation of tobacco product flavor bans imposed by localities and subsequent legal challenges throughout the U.S. See [Oregon Court Upholds Local Tobacco Product Flavor Ban](#); [Troutman Pepper Tobacco Team Featured in Vapor Voice Post on Ninth Circuit's Holding that L.A. County's Flavor Ban Is Not Preempted](#); [Philadelphia Flavor Ban Case Results in Permanent Injunction Against the City](#). In another example of locality action on this issue, the San Francisco City Attorney's Office [initiated a lawsuit](#) against three California-based e-cigarette distributors (defendants), alleging violations of the city's ban on flavored tobacco products and California law. The lawsuit was filed in the Superior Court of California, County of San Francisco. The case has been [dismissed](#) as to one of the defendants, but the litigation remains active against the other defendants.

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### PACT ACT BASICS: FIVE THINGS YOU SHOULD DO IF ATF COMES KNOCKING

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

"Hi, we're with the Bureau of Alcohol, Tobacco and Firearms, and we'd like to take a look at your tobacco product sales invoices, shipping records, and PACT Act reports."

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## Cannabis Regulatory Updates

### RESCHEDULING AND RECREATIONAL MARIJUANA: POSSIBLE STEP TOWARD NATIONAL LEGALIZATION?

By [Jean Smith-Gonnell](#) and [Michael Lafleur](#)

Published in [Reuters](#) on July 2, 2024.

On May 16, 2024, the Department of Justice (DOJ) issued its Notice of Proposed Rulemaking (NPRM) related to the transfer of marijuana from schedule I of the Controlled Substances Act (CSA) to schedule III, consistent with the recommendation provided by the Department of Health and Human Services (HHS) in August 2023. The CSA requires that rescheduling must be accomplished through a formal rulemaking process and public comment starting 60 days from the date of publication in the Federal Register.

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## **BRIDGING FEDERAL AND STATE CANNABIS LAWS: UNDERSTANDING THE IMPACT OF PROPOSED CHANGES AND NORTH CAROLINA'S LEGISLATIVE ACTIONS**

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

Among the two most widely reported federal changes to cannabis regulation are the Department of Justice's (DOJ) proposed regulation for the federal rescheduling of marijuana (the Proposed Rescheduling) and amendments to the 2018 Agricultural Improvement Act (the Farm Bill). The Proposed Rescheduling would result in the transfer of marijuana from Schedule I[1] of the Controlled Substances Act (CSA) to Schedule III[2] of the CSA.[3] The proposed amendments to the Farm Bill would change the definition of "hemp" to remedy a loophole currently utilized by hemp manufacturers who manufacture and sell intoxicating cannabis products.

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## **THE MILLER AMENDMENT: REDEFINING HEMP TO PROTECT PUBLIC SAFETY AND FAIR COMPETITION IN THE CANNABIS INDUSTRY**

By [Jean Smith-Gonnell](#) and [Cole White](#)

The rapid evolution of intoxicating cannabinoids has brought forth significant changes and challenges to both the agricultural and commercial cannabis sectors across the U.S. These new cannabinoids have exposed gaps in state and federal regulatory frameworks, allowing intoxicating substances to be marketed without the stringent level of oversight applied to state-legal cannabis products. These hemp-derived cannabinoids are often sold in gas stations and convenience stores, posing significant risks to consumers, especially minors. The lack of clear federal guidelines has left state attorneys general (AG) grappling with this gray market, leading to calls for legislative action to address the issue comprehensively.

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## **Environmental Updates**

### **VIRGINIA GOVERNOR AND AG ANNOUNCE WITHDRAWAL FROM CALIFORNIA-BASED EV MANDATE**

By Judy Jagdmann and [Natalia Jacobo](#)

## The Basics

Last week, Virginia Governor Glenn Youngkin [announced](#) that, effective January 1, 2025, Virginia will exit a California-led electric vehicle (EV) mandate and will instead comply with less stringent federal guidelines. The announcement followed Attorney General (AG) Jason Miyares' issuance of an [official advisory opinion](#) concluding, as a matter of law, that Virginia is not beholden to broad, recently passed mandates adopted by the California Air Resources Board (CARB), which were also set to take effect at the start of the new year.

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### **CALIFORNIA SPEARHEADS MULTISTATE EFFORT TO DEFEND EPA'S STRINGENT EMISSIONS STANDARDS FOR HEAVY-DUTY VEHICLES**

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

California Attorney General (AG) Rob Bonta is leading a coalition of Democratic AGs from 22 states and the District of Columbia to defend the Environmental Protection Agency's (EPA) rule that sets stringent greenhouse gas emissions standards for heavy-duty vehicles. The coalition filed a motion to intervene in the U.S. Court of Appeals for the D.C. Circuit, where the EPA's rule is facing a legal challenge from Republican AGs.

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### **CALIFORNIA AG ENFORCES SUBPOENA; PLASTIC LOBBYING GROUPS RESPOND WITH LAWSUIT**

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

California Attorney General (AG) Rob Bonta has issued two petitions to enforce an investigative subpoena against the Plastics Industry Association (PLASTICS) and the American Chemistry Council (ACC). PLASTICS lobbies on behalf of entities involved in the plastics supply chain. ACC is a trade association that represents chemical companies who create plastic products. The AG's petition accuses PLASTICS and ACC of failing to comply with the AG's prior subpoenas by providing insufficient responses and failing to provide requested documents. In response, PLASTICS and ACC filed lawsuits against the AG in Washington, D.C.

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## Antitrust Updates

### **NCAA REACHES SETTLEMENT AGREEMENT IN MULTISTATE AG ANTITRUST LAWSUIT**

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

Anticompetitive conduct remains a priority for state attorneys general (AGs), as evidenced by a preliminary settlement between the National Collegiate Athletics Association (NCAA) and an 11-state coalition of AGs, including Virginia, Colorado, District of Columbia, Illinois, Minnesota, Mississippi, New York, North Carolina, Tennessee, and West Virginia recently entered. Notably, the U.S. Department of Justice also signed the proposed settlement [agreement](#). Filed in the Northern District of West Virginia, the antitrust lawsuit challenged the NCAA's

transfer eligibility rule. The proposed settlement agreement is subject to approval by U.S. District Judge John Bailey, who previously granted a preliminary injunction, preventing the NCAA from enforcing the transfer rule during the spring sports season.

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## **NEW JERSEY AND CALIFORNIA AGS ADD TO THEIR ANTITRUST RANKS**

By [Ashley L. Taylor, Jr.](#), Drew Mann, and Tim Bado

Continued focus on antitrust enforcement has led the New Jersey and California attorneys general (AG) offices to go on a hiring spree. New Jersey AG Matthew Platkin recently announced the establishment of a permanent, stand-alone Antitrust Litigation and Competition Enforcement Section to enforce the New Jersey Antitrust Act. Meanwhile, the California AG's office intends to hire eight new antitrust attorneys in June 2024, with more expected throughout the year. The announcement out of the California AG's office aligns with the state's aggressive antitrust enforcement practices, and comes just two months after the California Department of Justice [announced](#) its plan to invigorate criminal antitrust prosecutions.

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## **Other State AG Actions**

### **TREASURY DEPARTMENT PUSHES BACK AGAINST STATE EFFORTS TO DISSOLVE CTA**

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

On June 3, the U.S. Treasury Department filed a [reply](#) in its 11th Circuit litigation[1] against the National Small Business Association regarding the constitutionality of the Corporate Transparency Act (CTA). Of late, the Treasury Department has faced additional pressure and scrutiny, with 22 states filing a joint [amicus brief](#) last month, asserting that the CTA displaces state authority and would economically harm residents.

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### **MASSACHUSETTS AG SECURES LANDMARK \$4M SETTLEMENT OVER ALLEGED STAFFING VIOLATIONS**

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

Massachusetts Attorney General (AG) Andrea Joy Campbell announced a \$4 million settlement with Next Step Healthcare, LLC (Next Step), a Massachusetts-based long-term care management company, in a deal that the AG described as the largest-ever nursing home settlement in Massachusetts. According to the AG's [announcement](#), Next Step operates 16 nursing homes in Massachusetts.

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### **TENNESSEE AND MISSISSIPPI AGS SUE THE HHS OVER NEW ANTIDISCRIMINATION RULE**



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

Tennessee and Mississippi attorney generals (AG), joined by 13 other states, filed a multistate lawsuit in the Southern District of Mississippi. The lawsuit challenges the U.S. Department of Health and Human Services' (HHS) attempt to expand the breadth of the Affordable Care Act's (ACA) antidiscrimination provision, known as Section 1557. This section prohibits discrimination on the basis of sex. HHS' new rule, which is scheduled to take effect on July 5, extends the definition of sex to encompass gender identity. The AGs argue that HHS' expansion of the ACA provision will have undesirable effects on the medical industry. They claim that the promulgation of this new rule is also unconstitutional and interferes with states' reserved powers.

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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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