

# Regulatory Oversight Newsletter — June 2024

## WRITTEN BY

Jesse Silverman | Blake R. Christopher | David B. Dove | McKayla Riter | Zie Alere | Cole White | Jeremy I. Levy | Sadia Mirza | Nicholas A. Stawasz | Robert A. Angle | Stephen C. Piepgrass | Amy Pritchard Williams | John S. West | Ashley L. Taylor, Jr. | Bryan M. Haynes | Ryan J. Strasser | Hilary S. Cairnie | Jean E. Smith-Gonnell | Samuel E. "Gene" Fishel | Michael A. Lafleur | Judith "Judy" Jagdmann | Drew Mann | Trey Smith | Carson A. Cox | Michael Yaghi | Clayton S. Friedman | Joel M. Lutz | Kim Phan | Susan N. Nikdel | Natalia A. Jacobo | Carmen J. Williams | John Sample | Whitney L. Shephard | Namrata Kang | Timothy McHugh | Nicholas Ramos | Timothy J. "Tim" Bado | Mary Grace W. Metcalfe | Agustin E. Rodriguez | Christopher Carlson | Daniel Waltz

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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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## Upcoming Events

### BRANCHING OUT: INTRODUCTION TO STATE AND LOCAL FALSE CLAIMS ACT PRACTICE

Amy Williams and Dan Waltz from Troutman Pepper will join Julia Clayton from the Law Office of Julia A. Clayton in the ABA State and Local Government Section's CLE on state and local False Claims Act (FCA) practices. The CLE will cover the fundamentals of FCA cases, the role of relators (*qui tams*) in exposing fraud, and how state and local entities have adapted the federal FCA template.

For more information, click [here](#).

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## Podcast Updates

### DECODING PRIVACY LAWS: INSIGHTS FOR SMALL TO MID-SIZED BUSINESSES

By [Stephen C. Piepgrass](#), [Gene Fishel](#) & [Joel Lutz](#)

In the latest episode of *Regulatory Oversight*, Troutman Pepper attorneys Gene Fishel and Joel Lutz welcome guests Aurelia Lewis and Beth Saunders of Lewis Media Partners to discuss evolving privacy laws and their impact on small to mid-sized businesses. Aurelia, as founder and president, and Beth, as vice-president, highlight their wealth of knowledge and experience guiding companies through effective advertising including media channel planning and buying.

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## FCA UNCOVERED: MITIGATING RISK IN THE REGULATORY SPOTLIGHT

By [Stephen C. Piepgrass](#) & [Amy Pritchard Williams](#)

In the latest episode of *Regulatory Oversight*, Troutman Pepper Partner Amy Williams welcomes Jenelle Beavers and Rob Sayegh from Alvarez & Marsal. Jenelle serves as a managing director and Rob as a senior director of A&M's Disputes and Investigations practice.

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## Private Equity Spotlight

In the current regulatory climate, there is an escalating focus on private equity firms from both federal and state regulators across a multitude of industries. This scrutiny is particularly evident in key sectors such as health care, where lawmakers at all levels have expressed concerns about rapid price increases and industry consolidation, largely attributed to private equity investment. As the regulatory landscape continues to shift and evolve, it is crucial for private equity clients to have expert guidance. Troutman Pepper, with its nationally recognized State Attorney General and Private Equity teams, is uniquely positioned to provide this assistance. Our firm is equipped to help private equity clients navigate these complexities, ensuring they stay ahead of regulatory changes and maintain compliance.

Over the next several months, our State AG and Private Equity teams will be publishing a series of thought leadership pieces that delve into federal and state activities related to the private equity space, providing further insights and guidance for companies operating within this dynamic environment. Make sure to [subscribe](#) to our *Regulatory Oversight* blog so you do not miss out on this new [private equity](#)-focused series. Recent articles include:

- [Federal Court Dismisses Antitrust Claims Against Private Equity Firm](#)
- [AGs Focus on AI Has Implications for Private Equity Investors](#)
- [California Bill Aims to Increase Oversight Over Health Care Acquisitions](#)

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## FTC Updates

### TROUTMAN PEPPER'S ABBEY THORNHILL JOINS FTC'S CONSUMER PROTECTION, DIVISION OF ENFORCEMENT

By [Stephen C. Piepgrass](#)

Abbey Thornhill, an associate based in Troutman Pepper's Richmond office, joined the Federal Trade Commission (FTC) in May 2024 as a general attorney in the Consumer Protection, Division of Enforcement. In her new position, she will monitor compliance with administrative and federal court orders in FTC consumer protection cases across a wide range of consumer protection issues, including advertising, financial practices, data security, high-tech fraud, and telemarketing. Thornhill will be responsible for conducting investigations of possible order violations, filing contempt actions in federal court to enforce injunctions, initiating court actions to obtain civil

penalties for administrative order violations, and enforcing a variety of FTC rules.

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## **FTC NONCOMPETE RULE RISKS A WAVE OF STATE AG ACTIONS**

By [Ryan J. Strasser](#) & [Carson Cox](#)

*Published in [Law360](#) on May 23, 2024. © Copyright 2024, Portfolio Media, Inc., publisher of Law360. Reprinted here with permission.*

On April 23, the FTC [promulgated](#) its final rule banning noncompetes nationwide.

While most commentary has focused on the scrutiny noncompetes would now garner at the federal level, few discussed the waterfall enforcement effect at the state level that would follow as state attorneys general could deploy their broad authority under state unfair or deceptive acts or practices, or UDAP, laws to treat noncompetes as separate and independent violations.

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## **Privacy Updates**

### **TROUTMAN PEPPER LAUNCHES ‘DEAR MARY’ ADVICE COLUMN**

By [Sadia Mirza](#)

‘Dear Mary,’ is Troutman Pepper’s Incidents + Investigations team’s advice column. Here, you will find Mary’s answers to questions about anything and everything cyber-related – data breaches, forensic investigations, how to respond to regulators, and much more. ‘Dear Mary’ goes beyond our articles, podcasts, webinars, and other content we produce because here, we respond directly to your questions with concise, practical answers. We promise they will be interesting, informative, and hopefully a little fun.

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### **COURT PERMITS ARKANSAS ATTORNEY GENERAL’S LAWSUIT AGAINST TIKTOK TO PROCEED**

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

The Circuit Court of Cleburne County, Arkansas, denied TikTok and its parent company ByteDance’s motion to dismiss a lawsuit brought by Arkansas Attorney General Tim Griffin. In the complaint, the AG alleges that TikTok engages in deceptive trade practices and has unjustly profited from the data of minors.

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### **STATE AG COALITION OPPOSES CURRENT FEDERAL PRIVACY LEGISLATION**

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

On May 8, attorneys general (AG) from 14 states and the District of Columbia [sent a letter](#) to Congressional leadership opposing provisions of the recently proposed federal American Privacy Rights Act (APRA). In addition to the District of Columbia, the signatory states include California, Connecticut, Delaware, Hawaii, Illinois, Maine, Massachusetts, Maryland, Minnesota, Nevada, New York, Oregon, Pennsylvania, and Vermont. Their objections primarily center on the APRA's preemption clause, which would nullify 16 state comprehensive data privacy laws that have been enacted since 2018.

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## AI Updates

### COLORADO ENACTS GROUNDBREAKING ARTIFICIAL INTELLIGENCE ACT

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

On May 17, 2024, Colorado Governor Jared Polis signed into law Senate Bill 24-205, the Colorado Artificial Intelligence (AI) Act, making Colorado the first U.S. state to enact comprehensive legislation regulating the use and development of AI systems. The act is designed to regulate the private-sector use of AI systems, particularly addressing the risk of algorithmic discrimination arising from the use of so-called "high-risk AI systems." The law will take effect on February 1, 2026, and the Colorado attorney general (AG) has exclusive enforcement authority.

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## Antitrust Updates

### FLORIDA, NEW YORK, AND THE DISTRICT OF COLUMBIA JOIN NCAA ANTITRUST LAWSUIT

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

On Wednesday, attorneys general (AG) for the states of Florida, New York, and the District of Columbia [announced](#) that they are joining Tennessee and Virginia in a multistate coalition challenging the National Collegiate Athletic Association's (NCAA) "Name, Image, and Likeness (NIL)-recruiting ban." Troutman Pepper previously [reported](#) on the lawsuit after the District Court entered a preliminary injunction order in February.

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### GOOGLE AND STATE AGS DEFEND PROPOSED \$700M ANTITRUST SETTLEMENT AMID JUDICIAL SCRUTINY

By [McKayla Riter](#), [Drew Mann](#) & [Tim Bado](#)

On April 17, a group of five state attorneys general (AG) and Google filed briefs defending the proposed \$700 million settlement agreement reached in three antitrust suits brought against Google.

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## Environmental Updates

### STATES SUE THE EPA OVER NEW EMISSIONS RULE

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

A coalition of Republican attorneys general representing 25 states has sued the Environmental Protection Agency (EPA) to block a new rule issued by the Biden-Harris administration as part of a suite of standards promulgated to reduce pollution from fossil fuel-fired power plants.

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### NEBRASKA ATTORNEY GENERAL LEADS MULTISTATE COALITIONS TO CHALLENGE ELECTRIC TRUCK MANDATES

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

Nebraska Attorney General (AG) Mike Hilgers is leading multistate coalitions in two lawsuits aimed at challenging the Biden administration and the State of California's electric vehicle mandates on truck owners and operators nationwide. The lawsuits argue that these mandates exceed the constitutional and statutory authority of the federal government and California regulators.

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### WHEN WORLDS COLLIDE: STATE AG-LED TORT CLAIMS MEET GOVERNMENT CONTRACTOR DEFENSE

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

A state attorney general (AG) and a major American corporation recently battled over the scope and applicability of the government contractor defense.

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## Cannabis Updates

### ADVISING A CANNABIS-RELATED BUSINESS: THE IMPORTANCE OF ATTORNEYS IN NAVIGATING THE MARIJUANA REGULATORY FRAMEWORK AND LICENSING SCHEME

By Jean Smith-Gonnell & [Carmen Williams](#)

#### Introduction

The medicinal and recreational use and popularity of marijuana has continuously grown throughout the U.S. since Oregon became the first state to decriminalize marijuana in 1973. To date, thirty-eight states and the District of Columbia have implemented medical marijuana programs, twenty-five of which have also expanded into adult-use.

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## THE ENEMY OF THE GOOD: COMPARING ADMINISTRATIVE V. LEGISLATIVE APPROACHES TO CANNABIS REFORM

By Jean Smith-Gonnell & Cole White

Only one day after reports surfaced that the Drug Enforcement Administration (DEA) will proceed with rescheduling cannabis from Schedule I to Schedule III of the Controlled Substances Act (CSA), Senators Charles Schumer (D-NY), Cory Booker (D-NJ), and Ron Wyden (D-OR) [reintroduced the Cannabis Administration and Opportunity Act](#) (CAOA or the Act), a nearly 300-page bill that would create a framework for the comprehensive regulation and taxation of cannabis in the United States. Then, on May 16<sup>th</sup>, [the Department of Justice issued its notice of proposed rulemaking to reschedule cannabis to Schedule III](#). Administrative and legislative approaches to cannabis reform each have their own strengths and weakness that must be carefully considered. In addition, these competing approaches offer an opportunity to highlight the political differences between administrative and legislative policy reform at the federal level.

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## FEDERAL AND STATE APPROACHES TO THERAPEUTIC CANNABIS

By [Agustin Rodriguez](#) & [Zie Alere](#)

Across states, lawmakers often embrace “medical” marijuana as a precursor to establishing a “recreational” marijuana market. Although marijuana remains illegal at the federal level — and would remain illegal even under the [proposed rescheduling](#) — federal regulators also recognize the therapeutic potential of certain marijuana-adjacent substances. At the federal level, the U.S. Food and Drug Administration (FDA) has approved one drug product derived from the *cannabis sativa L.* plant and three synthetic cannabis-related drug products. At the same time, 38 states and Washington, D.C., have established legal frameworks for access to medical marijuana. Comparing these frameworks to FDA’s drug approval process reveals fundamental differences between state and federal approaches to determining whether cannabis is “therapeutic.”

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## THE VARIED LANDSCAPE OF TOBACCO AND CANNABIS FLAVOR BANS OR RESTRICTIONS

By [Agustin Rodriguez](#), [Nick Ramos](#) & Kevin Andres Rodriguez\*

The landscape of tobacco product and cannabis flavor bans or restrictions varies significantly across the country. In both industries, some states restrict all or some flavors in all types of products, while other states restrict all or some flavors in some, but not all, products. Below, we provide a high-level overview of the flavor ban and restriction landscape in both industries. As we will discuss, there is a wide disparity between cannabis and tobacco product flavor bans or restrictions and, where they exist, there appears to be more flexibility among cannabis flavor restrictions than for tobacco product flavor bans or restrictions.

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## **CONNECTICUT ATTORNEY GENERAL CONTINUES TO TARGET UNLICENSED AND UNREGULATED CANNABIS SALES**

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

Last week the office of the Attorney General of Connecticut announced that the state had reached a [settlement](#) with HighBazaar over allegations that the organization allowed the unlicensed sale of cannabis, and the presence of minors, at their outdoor social cannabis events in Connecticut. The settlement represents one of many enforcement actions aimed at eliminating the state's gray market and protecting licensed businesses and consumers.

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## **KEY REGULATORY CHANGES IN COLORADO'S MARIJUANA INDUSTRY – WHAT BUSINESSES NEED TO KNOW**

By Jean Smith-Gonnell & Cole White

Just before the close of the Colorado legislature's 2024 session, lawmakers approved a bill aimed at streamlining several deficiencies in the state's regulation of marijuana businesses. While not all the bill's intended fixes were passed, certain provisions will facilitate significant changes for businesses, including for licensing processes, contaminant testing protocols, reporting obligations, compliance procedures, and operations management practices. Several notable changes are discussed below.

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## **Other State AG Actions**

### **NORTH CAROLINA ATTORNEY GENERAL REACHES \$500,000 SETTLEMENT IN FALSE CLAIMS ACT LAWSUIT AGAINST HEALTH CARE PROVIDERS**

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

North Carolina Attorney General Josh Stein and the U.S. Attorney's Office for the Middle District of North Carolina have reached a [\\$500,000 settlement](#) with Sharon Raynes Halliday and RAPHA Healthcare Services LLC, resolving a false claims lawsuit filed in July 2022 related to requests for payment submitted to the North Carolina Medicaid program.

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### **CONNECTICUT AG ADDS INDEPENDENT ENFORCEMENT AUTHORITY FOR DODD-FRANK ACTIONS**

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

A new Connecticut law expands the authority of the state's attorney general to enforce certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act).

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## **SPIRIT AEROSYSTEMS FILES LAWSUIT AGAINST TEXAS**

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

Spirit AeroSystems, Inc. (Spirit), a subsidiary of a company that produces fuselages for Boeing's 737 jets, has filed a lawsuit against Texas in response to the attorney general's (AG) recently initiated investigation into the company's alleged manufacturing issues — which the AG says led to midair emergencies earlier this year. The [lawsuit](#), filed on May 1, asserts that the state's probe is unconstitutional and violates Spirit's rights to be free from unreasonable searches.

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

Kevin Andres Rodriguez, a 2023 and 2024 summer associate with Troutman Pepper who is not admitted to practice law in any jurisdiction, 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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