

Regulatory Oversight Newsletter — May 2024

WRITTEN BY

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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

NAVIGATING FACILITY RELOCATION: LEGAL AND PRACTICAL CONSIDERATIONS

By [Stephen C. Piepgrass](#), [David Dove](#), and [Chris Willis](#)

In this episode, podcast host and Consumer Financial Services Partner Chris Willis converses with David Dove from our Regulatory Investigations, Strategy + Enforcement Practice Group about the legal and practical considerations for businesses planning to relocate a facility to a new state.

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THE CHANGING LANDSCAPE OF STATE AG ANTITRUST ENFORCEMENT

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

In this episode of Regulatory Oversight, Ashley Taylor is joined by his colleague Drew Mann to discuss the recent increase in antitrust actions by state attorneys general (AGs) and the potential impact of the State Antitrust Enforcement Venue Act on these enforcement activities.

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DOT Updates

DOT DEPUTIZES STATE AGS TO PURSUE CONSUMER CLAIMS AGAINST AIRLINES, CIRCUMVENTING LONG-STANDING PREEMPTION

By [Troutman Pepper State Attorneys General Team](#), [Ryan J. Strasser](#), and [Rachel Buck](#)

The U.S. Department of Transportation (DOT) recently announced an Airline Passenger Protection Partnership with state attorneys general (AGs), marking a significant expansion of AGs' regulatory reach. This partnership, formed in response to growing frustration among AGs over their limited ability to investigate passenger complaints and enforce state consumer protection laws against airlines, empowers AGs to investigate complaints against airlines and grants them access to complaints filed directly by consumers with the DOT.

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AI Updates

MASSACHUSETTS AG ISSUES ADVISORY ON AI AND CONSUMER PROTECTION LAWS

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

Massachusetts Attorney General (AG) Andrea Joy Campbell issued an [advisory](#) to provide guidance on how state consumer protection, anti-discrimination, and data security laws apply to artificial intelligence (AI). The advisory emphasizes that these existing laws apply to emerging technology, including AI systems.

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FTC Updates

POWERS COMBINED: FTC REPORT RECOMMENDS ENHANCED COLLABORATION WITH STATE AGS

By [Ashley L. Taylor, Jr.](#), [Clayton Friedman](#), and Blake Christopher

On April 10, the FTC released a long-awaited report on its cooperation with state attorneys general (AGs). The theme of the report is clear: the FTC intends to continue its existing collaboration with AGs and enhance that collaboration through information-sharing and legislative changes.

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Small Business Updates

THE NDAA 2024: IS THIS THE BEGINNING OF THE END FOR SELF-CERTIFICATION IN SBA SET-ASIDE PROCUREMENTS?

By [Hilary Cairnie](#), [Bonnie Gill](#), and [Trey Smith](#)

On December 22, 2023, the National Defense Authorization Act for Fiscal Year 2024, *Pub. L. No. 118-31, 137 Stat. 136 (2023)* (NDAA 2024) went into effect. Among other things, NDAA 2024 includes a provision phasing out

self-certification of service-disabled veteran-owned small businesses (SDVOSB) and requiring Small Business Administration (SBA) certification of SDVOSB program eligibility, not unlike the requirements for the HUBZone program. SDVOSBs and prime contractors, who seek to work with them to bid on and perform contracts set aside for SDVOSBs, should take note of these changes, which become effective October 1, 2025.

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Health care Industry Updates

MINNESOTA HOUSE PASSES KEY PROVISIONS OF DEBT FAIRNESS ACT

By [Troutman Pepper State Attorneys General Team](#) and [David N. Anthony](#)

On April 15, the Minnesota House of Representatives passed the Commerce Policy Omnibus bill, which includes [key provisions of the Minnesota Debt Fairness Act](#). Minnesota AG Keith Ellison supports this bill and celebrated its passage.

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NEW YORK SECURES \$1M SETTLEMENT WITH NORTHWELL HEALTH RELATED TO COVID-19 TESTING CHARGES

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

On April 12, New York Attorney General (AG) Letitia James announced that her office has reached a [settlement](#) with Northwell Health, New York's largest health care network, related to allegations of misleading billing practices involving COVID-19 testing.

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Merger and Acquisition Updates

RHODE ISLAND AG APPROVES MERGER OF MEDIA COMPANIES

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

On April 23, Rhode Island Attorney General (AG) Peter Neronha, approved the merger of Rhode Island PBS and The Public's Radio.

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Monitorships

MONITORSHIPS – A RESOURCE FOR AGS AND REGULATED BUSINESSES ALIKE

By [Troutman Pepper State Attorneys General Team](#) and Abbey M. Thornhill

Recently, a matter involving North Carolina Attorney General (AG) Josh Stein made headlines when it was announced that Affiliated Monitors Inc. would take over monitorship of HCA Healthcare. This relates to HCA's compliance with the conditions set forth in an asset purchase agreement involving six North Carolina hospitals it acquired when it purchased Misson Health System in 2019 for \$1.5 billion.

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Consumer Protection Updates

CALIFORNIA AG SUPPORTS UNFAIR COMPETITION CLAIMS AGAINST INSURANCE COMPANY

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

On April 11, California Attorney General (AG) Rob Bonta [filed](#) an amicus brief before the Supreme Court of the State of California arguing that policyholders should be able to assert claims under the state's Unfair Competition Law (UCL) independent of a one-year claim filing deadline under the California Insurance Code and their homeowners policy. The AG argues that the UCL's four-year statute of limitations should apply, not the one-year window mandated.

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WASHINGTON AG PREVAILS IN CONSUMER REVIEW FAIRNESS ACT LAWSUIT

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

Washington Attorney General (AG) Bob Ferguson prevailed in his lawsuit against a plastic surgery practice, Allure Esthetic, and its owner, Dr. Javad A. Sajan (collectively, the company), alleging violations of the federal Consumer Review Fairness Act (CRFA), based upon the company's practice of requiring patients to sign nondisclosure agreements (NDAs) that prohibited them from posting negative online reviews. The District Court granted the AG's motion for summary judgment (in part) and found the company liable for violations of the CRFA. Damages will be decided at a later date.

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TEXAS AG ANNOUNCES INVESTIGATION INTO BOEING SUPPLIER

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

Texas Attorney General (AG) Ken Paxton has [announced](#) an investigation into Boeing supplier, Spirit Aerosystems, for alleged manufacturing defects, which are believed to have caused various "concerning incidents, some of which occurred in-air."

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EIGHT AGS URGE COURT TO INTENSIFY MEASURES AGAINST REPEAT TELEMARKETING VIOLATOR

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

North Carolina Attorney General Josh Stein led a bipartisan coalition of eight state AGs, including Arkansas, Indiana, Michigan, Missouri, North Dakota, Ohio, and Texas, in requesting the District Court in the Southern District of Texas to amplify measures against John Caldwell Spiller, a repeat offender of federal and state telemarketing and telephone privacy laws.

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Tobacco Updates

WHAT'S AT STAKE FOR THE PREMIUM CIGAR INDUSTRY AS DC CIRCUIT CONSIDERS FDA APPEAL?

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

In August 2023, Judge Amit P. Mehta of the U.S. District Court for the District of Columbia partially [vacated](#) a Food and Drug Administration (FDA) [rule](#) that had “deemed” premium cigars subject to the Federal Food, Drug, and Cosmetic Act (FDCA), known as the “Deeming Rule.” This decision exempted premium cigars from FDA’s tobacco product authorities. In September 2023, however, FDA appealed, and the U.S. Circuit Court of Appeals for the D.C. Circuit is currently weighing the matter. So, what would it take for FDA to succeed on appeal, and what is at stake for the premium cigar industry?

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ADVOCACY ORGANIZATIONS SUE FDA OVER DELAY IN MENTHOL CIGARETTE BAN

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

On April 2, three advocacy organizations filed a [complaint](#) in the U.S. District Court for the Northern District of California seeking an order directing the U.S. Food and Drug Administration (FDA) to promulgate its already-proposed rule banning menthol as a characterizing flavor in combustible cigarettes. The case comes as FDA has missed several internal deadlines for promulgating a final rule on the topic.

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PACT ACT BASICS: FIVE THINGS TOBACCO SELLERS AND SHIPPERS SHOULD KNOW

By [Agustin Rodriguez](#) and [Michael Jordan](#)

The Prevent All Cigarette Trafficking (PACT) Act, 15 U.S.C. § 375 et seq., is a federal law with two primary objectives: (1) to prevent federal and state tax evasion on tobacco products, and (2) to prevent sales of tobacco products to minors. Government agencies, increasingly concerned about cheap, untaxed products getting into the hands of underage consumers, are using the PACT Act’s enforcement tools to crack down on noncompliant companies.

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Cannabis Updates

AWARDING MEDICAL CANNABIS LICENSES: TAKEAWAYS FROM RECENT ALABAMA LAWSUIT

By Jean Smith-Gonnell and [Zie Alere](#)

A recent lawsuit in Alabama, challenging the award of medical cannabis licenses by regulators, underscores the potential pitfalls in licensing regimes where applicants are selected based on specific enumerated factors. Below, we examine the Alabama lawsuit in greater detail and consider the alternative policy of utilizing a lottery system to award licenses.

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MASSACHUSETTS CANNABIS FIRMS CONTEST ALLEGED MISDOCUMENTATION OF COMMUNITY IMPACT FEES

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

Recent developments in the Massachusetts cannabis industry, significant legislative changes, and legal actions have spotlighted the contentious issue of so-called community impact fees. These fees, which are intended to offset municipal costs associated with hosting cannabis businesses, have sparked debate regarding their fairness and implementation.

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TAX REFUNDS FOR CANNABIS BUSINESSES? WHAT IS THE STORY?

By Jean Smith-Gonnell and Randy Varner

In January, we published an article in this newsletter on the state of cannabis taxation, including a discussion of the crippling impact of Internal Revenue Code §280E (IRC §280E) on the industry. Since that article was published, the industry has been shaken and encouraged by the news that Trulieve Cannabis Corp. received refunds totaling \$113 million from the Internal Revenue Service (IRS). To date, Trulieve has refused to divulge the specific basis for the refunds, citing competitive, trade-secret, and pending litigation reasons. In an article in *Cannabis Business Times* posted on February 29, however, it was reported that Trulieve CEO Kim Rivers responded “yes” to a question on X (formerly Twitter) on whether the refund was related to IRC §280E. In addition to Trulieve, another cannabis business, Ascend Wellness Holdings, has also reported it has amended federal tax returns for several years and is expecting to receive refunds. Before jumping into the speculation as to what the specific basis of the refunds are, it is helpful to briefly review IRC §280E.

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PREPARING FOR IRS CASH TRANSACTION REPORTING IN THE CANNABIS INDUSTRY

By Jean Smith-Gonnell and Joan Arnold

The various forms of information reporting required by the Internal Revenue Code form the backbone of both voluntary compliance with tax laws and the starting point for audits by the Internal Revenue Service (IRS). One form that is particularly relevant in the cannabis space is IRS Form 8300, which implements the law that requires a business to report transactions involving cash payments of more than \$10,000.

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21 STATE AGS CALL ON CONGRESS TO REGULATE INTOXICATING HEMP PRODUCTS

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

Attorneys general (AG) from 20 states and the District of Columbia have submitted a [letter](#) to Congress requesting that federal lawmakers close the “loophole” created by the 2018 Farm Bill that is widely understood to prohibit state regulation of intoxicating hemp products, including delta-8 tetrahydrocannabinol (THC) products.

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Stephanie Kozol, Senior Government Relations Manager – State Attorneys General, and [Mac McCullough](#), Senior Privacy & Security Advisor, 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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