

# Regulatory Oversight Newsletter — October 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

### NAVIGATING ESG: PREPARING FOR FUTURE REGULATIONS (PART TWO)

By [Stephen C. Piepgrass](#) and [Michael Yaghi](#)

In this episode of *Regulatory Oversight*, Mike Yaghi welcomes back Brooke Hopkins and Rob Sayegh of Alvarez & Marsal for the second part of their series on ESG compliance. This time, they dive into how companies can gear up for the upcoming Corporate Sustainability Reporting Directive (CSRD) requirements in Europe, which will take effect in 2026.

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### INVESTIGATION TAG TEAM: THE FTC AND THE STATE OF ARIZONA

By [Brooke Conkle](#), [Chris Capurso](#), and [Chris Carlson](#)

In this episode, Chris Carlson, an associate in the Regulatory, Investigations, Strategy and Enforcement (RISE) practice, joins Brooke and Chris to discuss how federal and state regulators are collaborating on consumer protection investigations. The team discusses a recent order and action against an Arizona-based auto dealer for multiple Unfair or Deceptive Acts or Practices (UDAP) violations. While contemplating whether this is a growing trend, the trio meanders into discussions about the CARS Rule and the potential impact of November's election

on the industry.

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## Environmental Updates

### ARE PLASTICS THE NEW PFAS?

By [Clayton Friedman](#), [Andrea Wortzel](#), Blake Christopher, and [Liz Glusman](#)

A recent conference led by Connecticut Attorney General (AG) William Tong discussed the alleged problems and potential solutions associated with plastics use and waste. Conference attendees included nearly two dozen representatives from state AG offices, medical and public health researchers, and leaders in the recycling and reclamation industry. Conversations focused on plastics' tendency to break down in the environment and, as a result, expose people and the environment to harmful chemicals. The concerns surrounding plastics in many ways parallel the concerns surrounding PFAS, an industry targeted recently by civil and criminal enforcement actions in multiple states. Businesses up and down the plastics supply chain should take note and prepare for potential state actions that put plastics in the crosshairs.

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## FTC Updates

### STATES' ACTION STILL VIABLE DESPITE BAN OF FTC NONCOMPETE RULE

By [Ryan J. Strasser](#) and Mackenzie W.J. Jessup

*This article was originally published on September 18, 2024 on [Bloomberg Law](#) and is republished here with permission.*

The Northern District of Texas's nationwide ban on the Federal Trade Commission's noncompete rule isn't a complete bar to government enforcement. The rule sought to curb unfair methods of competition and would have voided employees' noncompete provisions. It required employers to send notice that noncompete agreements are no longer enforceable.

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## Advertising + Marketing Updates

### CALIFORNIA GOVERNOR SIGNS NEW AUTOMATIC RENEWAL REQUIREMENTS INTO LAW

By [Clayton Friedman](#) and Natalia Jacobo

On September 24, California Governor Gavin Newsom signed Assembly Bill 2863 into law. The bill amends California's existing regulations on automatic renewal offers and continuous service offers made to California consumers.

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## Artificial Intelligence Updates

### TAKEAWAYS FROM TEXAS AG'S NOVEL AI HEALTH SETTLEMENT

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

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On Sept. 18, Texas Attorney General Ken Paxton announced a settlement with healthcare technology company Pieces Technology pursuant to the Texas Deceptive Trade Practices-Consumer Protection Act.

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### COLORADO AG ISSUES ADVISORY ON DEEPFAKES AHEAD OF 2024 GENERAL ELECTION

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

On September 9, Colorado Attorney General (AG) Phil Weiser issued a public advisory warning voters about the dangers of election misinformation and disinformation in the form of realistic-looking images, videos, and audio created using artificial intelligence (AI), known as “deepfakes.” The advisory follows the May 2024 enactment of HB24-1147, an act designed to prevent a broad range of actors from using deepfakes depicting candidates in political communications without properly disclosing the untruthful nature of the communication to voters.

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## Privacy Updates

### AMENDMENTS ALIGN PENNSYLVANIA'S BREACH NOTIFICATION LAW WITH MAJORITY OF STATES

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

Earlier this year, Governor Josh Shapiro signed amendments to Pennsylvania's Breach of Personal Information Notification Act (BPINA) into law, which go into effect on September 26. As part of the implementation of these requirements, Pennsylvania Attorney General (AG) Michelle Henry [announced](#) the launch of an online portal for companies and other entities to report data breaches that impact more than 500 Pennsylvania residents. As with notification to impacted individuals, covered entities must notify the AG “without unreasonable delay.” This new requirement aligns Pennsylvania's data breach notification law with the 35 states that have existing notice requirements for the applicable state regulator when a threshold number of state residents are impacted. Many of these states utilize a similar portal for submissions for ease of reporting.

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### TEXAS AG CHALLENGES HHS PRIVACY RULES

By [Gene Fishel](#), [Brent Hoard](#), [Joel Lutz](#), and Susie Lloyd

On September 4, Texas Attorney General (AG) Ken Paxton filed a lawsuit against the Department of Health and Human Services (HHS) Office for Civil Rights (OCR), challenging two key Health Insurance Portability and Accountability Act (HIPAA) rules — the 2000 Privacy Rule and the newly implemented 2024 Privacy Rule. These rules were enacted to protect the privacy of individuals' protected health information (PHI) under HIPAA. Texas argues that these rules unlawfully limit state investigators' ability to access PHI, impeding the enforcement of state laws.

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## **ENZO BIOCHEM INC. REACHES SETTLEMENT WITH CONNECTICUT, NEW JERSEY, AND NEW YORK AGS OVER 2023 DATA BREACH**

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

Molecular diagnostics company [Enzo Biochem, Inc.](#) has reached settlements resolving investigations in relation to a 2023 data breach by the attorneys general (AG) for Connecticut, New Jersey, and New York. Enzo has agreed to pay the states a total of \$4.5 million, as well as institute and maintain new data security protocols.

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## **Other State AG Actions**

### **WISCONSIN JOINS 30-STATE SETTLEMENT IN LANDMARK UNCLAIMED PROPERTY CASE**

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

In a significant development for state unclaimed property programs, Wisconsin has joined a bipartisan coalition of 30 states in reaching a settlement with Delaware, effectively concluding a long-standing dispute over unclaimed official checks issued by MoneyGram Payment Systems, Inc. (MoneyGram). This settlement follows a unanimous 2023 U.S. Supreme Court decision that ruled these checks are governed by the Federal Disposition Act.

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### **COLORADO ARGUES FOR EXPANDED APPLICATION OF STATE'S CONSUMER PROTECTION STATUTE**

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

In a recent amicus brief submitted to the Colorado Supreme Court, the Colorado Attorney General's (AG) office has expressed its support for plaintiffs in a case that raises questions about the interplay between Colorado's landlord-tenant laws and the Colorado Consumer Protection Act (CCPA). The case involves allegations that Home Partners Holdings LLC and its affiliates included illegal fees and provisions in their form leases, misleading tenants about their rights and obligations under Colorado law.

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## **NEW YORK AG ADOPTS FINAL PRECLEARANCE RULE AND PREPARES FOR THE NYVRA TO TAKE EFFECT**

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

The [New York Voting Rights Act's](#) (NYVRA) preclearance section takes effect on September 22, 2024. The new rule requires covered jurisdictions to seek “preclearance” of certain covered policy changes to their election and redistricting procedures from the New York Office of the Attorney General (AG) or an appropriate court. The public comment period on the AG’s proposed preclearance rule is closed and resulted in the AG adopting the proposed rule as final without substantive changes. The final [rule](#) further clarifies the standards and processes for obtaining preclearance and will be published in the State Register on September 11, 2024.

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## **Dear Mary Column**

### **SEC CYBERSECURITY INCIDENTS DISCLOSURES: MATERIALITY, DECRYPTORS, AND RANSOM PAYMENTS**

By Troutman Pepper

Dear Mary,

I work for a public company that recently experienced a ransomware attack. Fortunately, we were able to restore our business operations quickly by obtaining a decryption key from the threat actor. Given that we managed to get back up and running so swiftly, do we still need to determine whether the incident is material and report it?

Sincerely,

– Concerned Executive

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## **Tobacco Updates**

### **FDA TO ENFORCE CIGARETTE GRAPHIC WARNING RULE IN DECEMBER 2025, PENDING LITIGATION MAY INTERFERE**

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

In September, the U.S. Food and Drug Administration (FDA) announced that it would begin enforcing the agency’s [cigarette graphic warning rule](#) in December 2025, in an enforcement policy outlined in a short [guidance document](#). Although a federal district court previously found the rule unconstitutional, an appeals court reversed that decision, and the final rule is now in effect. According to the guidance, FDA will not begin enforcement until

December 2025 at the earliest, but we believe it likely that the rule might yet again be postponed or vacated, as it remains the subject of ongoing litigation.

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## **STATE AGS FILE AMICUS CURAE BRIEF IN US SUPREME COURT CASE INVOLVING FLAVORED E-CIGARETTES**

By [Bryan Haynes](#), [Chris Carlson](#), and [Nick Ramos](#)

Earlier this month, 20 Democratic state attorneys general (AG) filed an amicus brief supporting the U.S. Food and Drug Administration's (FDA) marketing denial orders (MDOs) of premarket tobacco applications (PMTAs) for flavored electronic nicotine delivery systems (ENDS or e-cigarettes) currently under review by the U.S. Supreme Court. The brief not only demonstrates which side these states support, but also identifies specific enforcement priorities for these states.

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## **FDA PROPOSES SUBMISSION TRACKING NUMBER REQUIREMENT FOR ENDS IMPORTS**

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

In August, the U.S. Food and Drug Administration (FDA) issued a new [proposed rule](#) that would require importers of electronic nicotine delivery system (ENDS) products to provide an FDA-issued submission tracking number (STN) to U.S. Customs and Border Protection (CBP) for imports of such products. This rule could result in the denial of entry for ENDS imports for which the manufacturer has not submitted a premarket tobacco product application (PMTA) to FDA.

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## **Cannabis Regulatory Updates**

### **MISSOURI GOVERNOR'S EFFORTS TO BAN UNREGULATED PSYCHOACTIVE CANNABIS PRODUCTS MEETS RESISTANCE**

By Jean Smith-Gonnell, [Jeff Johnson](#), and [Nick Ramos](#)

On August 1, Missouri Governor Michael Parson issued [Executive Order 24-10](#) (the EO), a bold move aimed at addressing consumer safety concerns surrounding unregulated psychoactive cannabis products. The EO sparked a legal battle with the Missouri Hemp Trade Association (MO Hemp), which claims that by designating these products as adulterated and imposing an embargo under the EO, the Missouri Department of Health and Senior Services (DHSS) violated Missouri law. The governor's action is yet another example of a state taking aggressive steps to address gaps left by the lack of federal regulations to ensure consumer safety in the burgeoning industrial hemp industry.

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## HAPPY HOUR AT 4:20? LESSONS FROM MINNESOTA'S BOOMING HEMP-DERIVED THC BEVERAGE MARKET

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

When Minnesota legislators passed House File 4065 in 2022 — legalizing the sale of certain hemp-derived THC edibles and beverages — few could have [predicted](#) that a multimillion-dollar THC-infused beverage market would result. Today, Minnesota consumers enjoy access to THC beverages in many places traditionally reserved for alcohol — liquor stores, breweries, bars, and restaurants.

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## NCAA DRUG TESTING & CANNABINOIDS: A BREAK-UP STORY

By Jean Smith-Gonnell and Carmen Williams

### I. Introduction

The National Collegiate Athletic Association (NCAA) is the largest governing body in college athletics. The NCAA regulates all aspects of student athletics among 1,100 schools in the United States. It also organizes the athletic programs for over 500,000 collegiate student athletes. Part and parcel to their governance of collegiate athletics is the NCAA's responsibility for maintaining the integrity of competition by conducting drug testing procedures for student athletes under their purview. On June 26, 2024, the NCAA removed cannabis from its banned drugs list for Division I college football championship and post-season. This decision has significant legal and policy implications that extend beyond the realm of collegiate athletics. Arguably, this decision is a part of the evolving public perception of marijuana.

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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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