

Regulatory Oversight Newsletter — September 2023

WRITTEN BY

[Cole White](#) | [Sadia Mirza](#) | [Stephen C. Piepgrass](#) | [Amy Pritchard Williams](#) | [John S. West](#) | [Ashley L. Taylor, Jr.](#) | [Bryan M. Haynes](#) | [Ryan J. Strasser](#) | [Avi Schick](#) | [Hilary S. Cairnie](#) | [Jean E. Smith-Gonnell](#) | [Samuel E. "Gene" Fishel](#) | [Michael A. Lafleur](#) | [Judith "Judy" Jagdmann](#) | [Trey Smith](#) | [Michael Yaghi](#) | [Clayton S. Friedman](#) | [Susan N. Nikdel](#) | [Natalia A. Jacobo](#) | [John Sample](#) | [Namrata Kang](#) | [Christina Sava](#) | [Ketan D. Bhirud](#) | [Timothy J. "Tim" Bado](#) | [Agustin E. Rodriguez](#) | [Christopher Carlson](#) | [Daniel Waltz](#)

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.

INCIDENTS + INVESTIGATIONS

DATA PROTECTION: ONE OF THESE INCIDENTS IS NOT LIKE THE OTHER

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

In the burgeoning realm of data incidents, it is a truism that such incidents are not created equal. Indeed, a data incident is not necessarily a data breach.

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DIGITAL ASSETS UPDATES

CAPITAL MARKERS, PROFESSIONAL PERSPECTIVE – PROPOSED NY DIGITAL ASSET FRAMEWORK IMPOSES CONSUMER PROTECTION-FOCUSED MEASURES

By [Michael Yaghi](#), [Ketan Bhirud](#), and [Trey Smith](#)

On May 5, 2023, New York Attorney General (AG) Letitia James [introduced](#) legislation to regulate businesses engaged in digital asset-related activities “from or within the State of New York.” Titled the “Crypto Regulation, Protection, Transparency, and Oversight Act” (the CRPTO Act or the Act), AG James has called the proposal “the strongest and most comprehensive set of regulations on cryptocurrency in the nation.”

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CANNABIS UPDATES

HHS PROPOSES RESCHEDULING CANNABIS TO SCHEDULE III – WHAT IT MEANS FOR THE INDUSTRY

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

It has been widely reported and confirmed publicly that, on August 29, the U.S. Department of Health and Human Services (HHS) [sent a letter](#) to the Drug Enforcement Administration (DEA) recommending that cannabis be moved from Schedule I to Schedule III of the Controlled Substances Act (CSA). While this change would not lift the federal prohibition on cannabis, and the DEA will need to perform its own review, the move could have profound implications for researchers and industry participants.

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CANNABIS PLAIN PACKAGING RULES: EXAMPLES AND OPPORTUNITIES

By [Agustin Rodriguez](#) and Christina Sava

Much attention has recently been placed on hemp-derived products marketed in packaging that mimics popular snack foods.^[1]

According to the U.S. Food and Drug Administration and various state regulators, this type of packaging has contributed to an increase in accidental consumption of intoxicating hemp products by minors.

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NEW YORK STATE COURT ENJOINS LICENSING OF ADULT-USE CANNABIS DISPENSARIES STATEWIDE AMID RETAIL CANNABIS REGULATION DISPUTES

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

On August 18, 2023, a New York Supreme Court judge [enjoined](#) New York cannabis regulators from further processing, approving, or investigating any new or pending applications for a state conditional adult-use retail dispensary (CAURD) license, leaving New York's nascent adult-use cannabis market in limbo.

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CALIFORNIA AG PETITIONS STATE COURT FOR ORDER TO SEIZE ASSETS FROM AN UNLICENSED CANNABIS DISPENSARY

By [Troutman Pepper State Attorneys General Team](#), Jean Smith-Gonnell, and [Agustin Rodriguez](#)

California Attorney General (AG) Rob Bonta is asking the Los Angeles County Superior Court to enter a civil forfeiture order allowing the state to collect unpaid taxes and fees from an unlicensed marijuana business by seizing its assets.

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CANNABIS INVENTORY TRACKING URGES COLORADO STATE COURT TO DISMISS MARIJUANA DISPENSARY'S LAWSUIT

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

Florida-based cannabis inventory tracking vendor [Metrc LLC](#) is asking a Colorado state court to toss a dispensary's lawsuit challenging its process for charging so-called "support fees" as violative of state anti-trust and consumer protection laws.

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DIRECTOR OF THE MASSACHUSETTS CANNABIS REGULATOR IS DEPARTING AMID AGENCY'S PROMULGATION OF NEW CANNABIS CAFÉ RULES

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

The Massachusetts Cannabis Control Commission's first and only executive director is supposedly planning to leave the agency, which is in the midst of implementing the state's new [cannabis equity law](#), enacted in August 2022. This law includes new regulations concerning licensed "[marijuana social consumption establishments](#)," which are more commonly known as cannabis cafés.

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ENVIRONMENTAL UPDATES

EPA CYBERSECURITY RULE CHALLENGED BY STATES AND WATER SYSTEMS ASSOCIATIONS

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

On July 25, Missouri, Arkansas, and Iowa (the states), along with intervenors American Water Works Association and National Rural Water Association (the water associations), petitioned the Eighth Circuit to review the U.S. Environmental Protection Agency's (EPA) new rule requiring states to review and report cybersecurity threats to their public water systems (PWS).

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PLAINTIFFS AND 3M GIVEN AUGUST 28 DEADLINE TO RESPOND TO STATE AGS' OPPOSITION TO \$12.5B SETTLEMENT IN THE PFAS MULTIDISTRICT LITIGATION

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

Public water utilities and 3M have until August 28 to respond to the bipartisan coalition of 22 state AGs that opposes their proposed \$12.5 billion class action settlement over alleged per- and polyfluoroalkyl substance (PFAS) contamination and is [seeking to intervene](#) in their litigation.

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FIVE STATE AGS WRITE AMICUS LETTER CONCERNING ENVIRONMENTAL SETTLEMENT

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

On August 7, California AG Rob Bonta led a coalition of five state AGs in filing an amicus [letter](#) concerning a proposed class action settlement between DuPont, Chemours, and Corteva, and water providers for \$1.185 billion. The AGs contend the settlement amount is far too low given the scope of environmental contamination and health impacts caused by Dupont's decades-long manufacture and sale of PFAS compounds.

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NEBRASKA AND IOWA AGS SUE BIDEN ADMINISTRATION'S EPA FOR FAILING TO FULFILL SALE OF YEAR-ROUND E15 GASOLINE

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

On August 7, Nebraska AG Mike Hilgers and Iowa AG Brenna Bird joined forces to sue the EPA for failing to fulfill the request by Iowa and Nebraska governors to allow the sale of year-round E15 gasoline.

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HEALTH CARE UPDATES

ILLINOIS EXPANDS HEALTH CARE TRANSACTION OVERSIGHT

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

On August 11, Illinois Governor J.B. Pritzker signed House Bill 2222 ([Public Act 103-0526](#)) into law — bolstering Illinois' antitrust prevention efforts by expanding the oversight purview of its AG office with respect to health care transactions. Under the new law, the Illinois AG now has the power to review and assess certain “covered transactions” entered into between health care facilities and providers.

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MASSACHUSETTS AG ANNOUNCES CREATION OF NEW ELDER JUSTICE UNIT, APPOINTS EXPERIENCED HEALTH CARE PROSECUTOR AS HEAD

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

Massachusetts AG Andrea Joy Campbell [announced](#) the creation of a new Elder Justice Unit, which will use existing resources to protect and promote the safety and well-being of elders through enforcement actions, legislative advocacy, and community engagement and education.

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AG UPDATES

SUPREME COURT DENIES ORAL ARGUMENT TO REPUBLICAN STATE AGS WHO ARGUE THAT THE CFPB FUNDING MECHANISM IS UNCONSTITUTIONAL

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

On August 21, the U.S. Supreme Court denied a [request](#) by West Virginia AG Patrick Morrissey and 26 other state AGs to participate in oral arguments in *Consumer Financial Protection Bureau (CFPB) et al. v. Community Financial Services Association of America et al.*, which concerns whether the CFPB's statutory authorization [violates the Constitution's Appropriations Clause](#). Morrissey and the other predominantly Republican state AGs submitted an [amicus brief](#) arguing that it does. Morrissey was joined by the AGs for Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wyoming.

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SEVEN STATE AGS ANNOUNCE SETTLEMENT WITH ROBOCALLERS

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

On August 16, a coalition of seven state AGs announced a settlement with participants alleged to be involved in a “massive” robocall operation. The stipulated order, which names Scott Shapiro, Michael T. Smith, Jr., and Health Advisors of America (defendants), permanently bans Shapiro and Smith from initiating or facilitating robocalls; working in or with companies that make robocalls; and engaging in telemarketing. The settlement also requires the defendants to make monetary payments to the coalition, which is composed of AGs from the states of Arkansas, Indiana, Michigan, North Carolina, North Dakota, Ohio, and Texas (the AGs).

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CONNECTICUT AG LEADS BIPARTISAN STATE AG COALITION IN EMPHASIZING THE IMPORTANCE OF FEDERAL-STATE PARTNERSHIPS TO PREVENT CONSUMER FRAUD

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

Connecticut AG William Tong, along with [Illinois](#), [New Hampshire](#), and Tennessee AGs, [jointly authored](#) a letter to the Federal Trade Commission (FTC) urging improved collaboration with state AGs.

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DISTRICT OF COLUMBIA AG ISSUES SUPPLEMENTAL BUSINESS ADVISORY ON RESTAURANT FEES

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

In August, District of Columbia AG Brian Schwalb issued a [Supplemental Business Advisory](#) (advisory) to provide guidance and examples to restaurants for complying with their legal obligation under the District's Consumer Protection Procedures Act (CPPA) to adequately disclose all fees, including service fees, to customers. See D.C.

Code § 28-3901, *et seq.* The advisory clarifies that the CPPA does not prohibit restaurants from charging such fees or surcharges, but emphasizes that “these fees may violate the CPPA if they are not timely, prominently, and clearly disclosed to diners before they place their orders.”

[Read more](#)

MICHIGAN AG REPORTS THAT NEW PROGRAM TO ADDRESS UNLICENSED BUILDERS SHOWS GREAT SUCCESS

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

On August 10, Michigan AG Dana Nessel issued a press release to report the success of the new Unlicensed Builders Pretrial Diversion Program that was launched in February. Nessel launched the new program to promote licensing compliance, ensure restitution to victims, and efficiently resolve cases of Michigan consumer complaints of harm caused by unlicensed builders in the state.

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NEW YORK AG ANNOUNCES SETTLEMENT WITH AVIS BUDGET GROUP

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

On August 15, New York AG Letitia James announced a settlement with Avis Budget Group Inc. (Avis Budget), for allegedly denying car rentals to customers who did not possess a credit card. Under the terms of the settlement, Avis Budget will pay \$275,000 in civil penalties, and will update its relevant employee training.

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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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