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Troutman Pepper State Attorneys General Monitor – December 2021

WRITTEN BY

Timothy A. Butler | Stephen C. Piepgrass | Siran S. Faulders | John S. West | Keith J. Barnett | Ashley L. Taylor, Jr. | Barry H. Boise | Bryan M. Haynes | Ryan J. Strasser | Avi Schick | William H. Hurd | Whitney L. Shephard | Tanner N. Brantley | Namrata Kang | Abbey Thornhill | Michael B. Jordan | Timothy McHugh | Christina Sava | Rachel Buck Hodges | Ketan D. Bhirud | Bonnie Gill | Nicholas Ramos | Carlin A. McCrory | Matthew White | Agustin E. Rodriguez | Christopher Carlson

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Troutman Pepper's State Attorneys General team combines legal acumen and government experience to develop comprehensive, thoughtful strategies for clients. Our lawyers handle individual and multistate AG investigations, proactive counseling and litigation, and manage ancillary regulatory issues. Our successful approach has been recognized by *Chambers USA*, which ranked our practice as a leader in the industry.

REGULATORY OVERSIGHT BLOG

Make sure you subscribe to Troutman Pepper's Regulatory Oversight blog to receive the most up to date information on regulatory actions.

Regulatory Oversight provides 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 include attorneys with multiple specialties, including regulatory enforcement, litigation, and compliance.

STATE ATTORNEYS GENERAL RESOURCES

TROUTMAN PEPPER'S STATE ATTORNEYS GENERAL PRACTICE LAUNCHES NEW RESOURCES

Members of the firm's State Attorneys General practice have worked closely with AGs throughout the U.S. for decades — advocating for our clients, representing them in investigations, and monitoring and reporting on enforcement trends. In addition to our blog, Regulatory Oversight, we are pleased to announce the launch of several resources to help us share our expertise with clients and contacts.

- **AG Elections Map:** We have developed a map to track developments in the AG landscape throughout the U.S., focused on monitoring candidates, races, and elections.
- **Troutman Pepper Experience Map:** As leaders in the state attorneys general space, we offer deep experience with AG offices in all fifty states. Our new map highlights key single-state and multistate investigations handled

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by our nationally-ranked practice.

- **AG Association Event Calendar:** Our lawyers participate in, and sponsor, four major AG associations — the Democratic Attorneys General Association (DAGA), the Republican Attorneys General Association (RAGA), the National Association of Attorneys General (NAAG), and the AG Alliance (AGA). In addition to reporting on key meetings throughout the year, we have developed a calendar of events held by each of these organizations.

PROPOSED FEDERAL FCA AMENDMENTS

HOW THE U.S. SENATE'S PROPOSED AMENDMENTS TO THE FEDERAL FALSE CLAIMS ACT COULD INFLUENCE STATE FALSE CLAIMS ACTS NATIONALLY

By Ryan Strasser and Abbey Thornhill

On October 28, 2021, a majority of members on the Senate Judiciary Committee voted 15-7 to advance to the full U.S. Senate a bipartisan bill that would make a number of amendments to the federal False Claims Act (FCA). These proposed amendments are significant for two primary reasons: (1) a bipartisan group of senators drafted the proposed legislation with the intent of strengthening the FCA as a tool for the government to prosecute fraud perpetrated against the United States; and (2) the proposed amendments portend, regardless of their actual enactment, potential future changes to the various state false claims acts across the country, which are modeled after the federal FCA but are often more aggressive than their federal counterpart.

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ASHLEY TAYLOR INTERVIEWED BY THE AMERICAN LAWYER

Last week, Ashley Taylor caught up with *The American Lawyer's* Ross Todd to discuss how Troutman Pepper built one of the first state attorneys general practices and why clients turn to our team for their regulatory needs. To get his answers, read the full interview here.

PRIORITIZATION ON ENVIRONMENTAL JUSTICE

DEMOCRATIC ATTORNEYS GENERAL URGE EPA TO PRIORITIZE ENVIRONMENTAL JUSTICE IN HYDROFLUOROCARBONS RULE

By Timothy McHugh, Ketan Bhirud, and Tanner Brantley

As routinely covered at *Regulatory Oversight*, state attorneys general have assumed an ever-more prominent role in driving national regulatory policy through advocacy and enforcement activities. Underlying many of these efforts is an aggressive focus on environmental justice by the state attorneys general that reaches further than federal efforts. Most recently in U.S. EPA proceedings to develop a national allowance allocation and trading program for hydrofluorocarbons (HFCs), multiple state attorneys general proposed more stringent regulations than what EPA ultimately adopted.

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FTC UPDATES

SELLER BEWARE: FTC ISSUES NOTICES OF PENALTY OFFENSES IN EFFORT TO COMBAT "EXPLOSION" OF DECEPTIVE ENDORSEMENTS AND ADVERTISING

By Whitney Shephard and William Hurd

The Federal Trade Commission (FTC or Commission) recently signaled its readiness to take a more aggressive approach when it comes to enforcing consumer protection laws, especially for violations by for-profit colleges and institutions, advertisers, retailers, consumer products companies, multilevel marketing ventures, and even social media influencers. Over the course of October 2021, the FTC sent Notices of Penalty Offenses (Notices) to nearly 2,000 such companies, warning them that they could incur significant civil penalties — up to $43,792 per violation — if they engage in conduct that has been ruled unfair or deceptive in prior FTC administrative cases. While the enforcement of such laws by the FTC is nothing new, the source of the enforcement authority it is relying upon to issue these Notices is significant, along with the sheer volume in which it recently distributed them.

Read more

FTC TO "RAMP UP ENFORCEMENT" ON SUBSCRIPTION SERVICES

By Timothy Butler, Keith Barnett, and Carlin McCrory

On October 28, the Federal Trade Commission (FTC) issued a new policy statement on autorenewal and negative option marketing.

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REGULATORY SCRUTINY

LAWMAKERS AND REGULATORS SCRUTINIZE THE NASCENT "NEOBANK" INDUSTRY

By Stephen Piepgrass and Rachel Buck

The proliferation of "neobanks" has recently drawn the attention of lawmakers and regulators. "Neobanks" are financial technology companies that offer bank-like services through a digital interface. These companies often advertise themselves as serving low- to moderate-income individuals who are underserved by traditional banks. Neobanks offer a variety of services, like deposit accounts and paycheck advance programs. While these services are similar to those offered by traditional banks and payday lenders, neobanks are not subject to the same regulatory frameworks that govern more traditional entities. As a result, neobanks occupy a regulatory gray area that regulators and lawmakers are currently working to define.

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VIRGINIA ATTORNEY GENERAL

NEW AG ON THE BLOCK: JASON S. MIYARES ELECTED AS VIRGINIA ATTORNEY GENERAL

By Stephen Piepgrass, Ashley L. Taylor, Jr., Christopher Carlson, and Namrata Kang

On November 2, Jason S. Miyares won the Virginia election to become Virginia's first Latino attorney general. Miyares, a son of a Cuban refugee and a former criminal prosecutor, defeated two-term incumbent Attorney General Mark Herring. We have discussed Miyares' campaign platform in detail here.

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MINNESOTA SUPREME COURT RULING

"AID" OR "AIDING AND ABETTING?" MEDICAL MARIJUANA AND FEDERAL PREEMPTION IN MINNESOTA

By Agustin Rodriguez and Michael Jordan

On October 13, the Supreme Court of Minnesota barred an employee from getting reimbursed for medical marijuana treatment for a work-related injury. Although the employee was entitled to reimbursement from her employer under state law, the court found that the Controlled Substances Act (CSA) preempted state law. The decision highlights the latest episode of tension between marijuana's federal listing as a Schedule I controlled substance — which includes drugs with "no currently accepted medical treatment use" — and states that have authorized marijuana for medical treatment.

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CFPB UPDATES

CFPB DIRECTOR ROHIT CHOPRA RESPONDS TO STABLECOIN REPORT

By Keith J. Barnett, Timothy Butler, Carlin McCrory, and Matthew White

On November 2, Consumer Financial Protection Bureau (CFPB) Director Rohit Chopra released a statement on the *Report on Stablecoins* issued by the President's Working Group on Financial Markets, the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC).

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RECENTLY CONFIRMED CFPB DIRECTOR ROHIT CHOPRA FILLS TWO KEY LEADERSHIP POSITIONS

By Timothy Butler and Dominyka Plukaite**

On October 29, the Consumer Financial Protection Bureau (CFPB or Bureau) announced leadership changes in two positions: the assistant director for the Office of Supervision Policy and the assistant director for the Office of Enforcement.

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CANNABIS UPDATES

BIPARTISAN GROUP OF ATTORNEYS GENERAL CALL FOR FEDERALISM TO GUIDE CANNABIS POLICY

By Siran Faulders, Christopher Carlson, and Christina Sava

On November 18, a bipartisan group of attorneys general from Arizona, Connecticut, North Dakota, and Vermont (Attorneys General) jointly submitted a letter offering commentary on the Cannabis Administration and Opportunity Act (CAOA) to congressional leaders. In it, the Attorneys General stressed the importance of establishing a "cooperative federal-state partnership" that strikes the right balance to avoid "both under and overregulation." While acknowledging the expertise and public benefits that will be achieved through the federal government's involvement in regulating cannabis, the Attorneys General stated that "[i]t is imperative that legislation legalizing cannabis under federal law be accompanied by a post-legalization federal regulatory regime that respects federalism while working in concert with existing state regulation."

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RESIDENCY RULES IN CANNABIS INDUSTRY MAY NOT WITHSTAND CONSTITUTIONAL SCRUTINY

By Agustin Rodriguez and Christina Sava

There are many unique challenges to consider when it comes to opening or investing in a cannabis business. Residency requirements, or prohibitions on licensure of nonresidents, are one that may soon see their end. In other industries, requirements that business licenses be reserved for residents of a certain state are largely a thing of the past, having been rejected by courts as violations of the dormant commerce clause — a legal doctrine, which holds that a state law discriminating against out-of-state goods or nonresident economic actors can stand only if it is narrowly tailored to promote a legitimate local purpose. As recently as 2019, this doctrine was invoked to overturn Tennessee's residency requirement for liquor store licenses. In *Tennessee Wine and Spirits Retailers Assn. v Thomas*, the Supreme Court held that Tennessee had no compelling interest to prevent nonresidents from holding Tennessee liquor licenses.

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TOBACCO INVESTIGATIONS

NORTH CAROLINA AG OPENS INVESTIGATION INTO E-CIGARETTE MAKER PUFF BAR

By Agustin Rodriguez, Christopher Carlson, and Michael Jordan

On November 16, North Carolina Attorney General Josh Stein launched a probe into e-cigarette maker Puff Bar and others, citing concerns of youth-appealing flavors, youth marketing, and poor age verification. In a statement, Stein announced, "We are actively investigating Puff Bar and other companies at all stages of the distribution chain, from manufacturers to retailers and everything in between to ensure they are not profiting off kids."

Read more

AG SETTLEMENTS

NO MORE HIDDEN "RESORT FEES" AT MARRIOTT

By Ketan Bhirud and Namrata Kang

Hidden “resort fees” will soon be a thing of the past for Marriott International, Inc. after a recent settlement between the company and Pennsylvania Attorney General Josh Shapiro. Hotels like Marriott routinely advertise nightly rates that do not include mandatory fees, such as resort fees. Those fees are then added later — usually on the last page in the booking process, but sometimes not until check-in. Attorney General Shapiro referred to this practice as “drip pricing” because fees are gradually disclosed to consumers. He said it is misleading, deceptive, and violates the Pennsylvania Unfair Trade Practices and Consumer Protection Laws.

Read more

COMPLIANCE UPDATES

ADVERTISING COMPLIANCE IN THE ALCOHOLIC BEVERAGE INDUSTRY

By John West and Nick Ramos

We recently posted that the Federal Trade Commission (FTC) issued warnings to a large number of companies in various industries about “unfair” or “deceptive” trade practices related to third-party endorsements. Some of the businesses that received those warnings included alcoholic beverage companies. FTC’s warnings raise the broader question of what is acceptable when it comes to advertising in the alcoholic beverage industry, especially given the rise in use of social media and online platforms to promote products. In this post, we provide a high-level overview of the regulations and guidance that govern advertising alcoholic beverages to consumers, along with some overall considerations.

Read more

***Dominyka Plukaite is not licensed to practice law in any jurisdiction; bar application pending in Georgia.*

Our Cannabis Practice provides advice on issues related to applicable state law. Cannabis remains an illegal controlled substance under federal law.

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