

Troutman Pepper State Attorneys General Monitor – February 2022

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REGULATORY OVERSIGHT BLOG

Make sure to [subscribe](#) to Troutman Pepper's [Regulatory Oversight](#) blog to receive the most up to date information on regulatory actions.

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.

SERVICEMEMBERS CIVIL RELIEF ACT

Recent Federal- and State-Level Servicemembers Civil Relief Act Enforcement Re-Emphasize the Act's Importance

By [Stephen Piepgrass](#), Matt Fay, [Tim McHugh](#), and [Nicholas Ramos](#)

Federal law and analogous state laws provide a broad array of generous, and often misunderstood, consumer and other protections to military servicemembers enforceable by federal and/or state authorities. Two recent enforcement actions illustrate this fact and reinforce the importance of including servicemember protection laws in any well-developed compliance program.

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FALSE ADVERTISING ENFORCEMENT

State AGs Lead the Way in False Advertising Enforcement

By [Ryan Strasser](#), [Rachel Buck](#), Abbey Thornhill, and Mackenzie Willow-Johnson

Advertisements are everywhere. As we are constantly bombarded with information about the latest trends in every area from health and nutrition to finance and technology, it can be difficult to determine what information we can trust versus what may be “fake news.” Over the past few years, we have seen state attorneys general (AGs) seek to take the lead in combatting the information overload through enforcement of consumer protection laws, namely through lawsuits alleging claims for false advertising. This article explains the sources of the state AG power to investigate and prosecute false advertising claims, discusses enforcement trends through 2021, and predicts what we may see from state AGs in the area of false advertising in 2022.

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AG SETTLEMENTS

Thirty-Nine State AGs Reach a \$1.85 Billion Settlement With Student Loan Servicer Navient

By Siran Faulders, [Ashley L. Taylor, Jr.](#), [Chris Carlson](#), and [Namrata Kang](#)

On January 13, Navient Corp. (Navient), once the largest student loan servicer in the nation, reached a \$1.85 billion settlement with a bipartisan coalition of 39 state attorneys general (State AGs) and a contemporaneous resolution with the Mississippi attorney general. The settlement resolves these State AGs’ investigations related to Navient’s lending practices, which [we have analyzed in detail](#). Importantly for all companies that may be the subject of a State AG investigation, Navient’s multistate agreement demonstrates the complexity of obtaining global peace — specifically, a release of liability from all investigating regulators and private actions.

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ATTORNEY GENERAL PROFILE: VIRGINIA

Virginia Attorney General-Elect Jason Miyares Announces His Leadership Team

By [Namrata Kang](#), [Bonnie Gill](#), [Chris Carlson](#), [Ashley L. Taylor, Jr.](#), and [Stephen Piepgrass](#)

On January 3, Virginia Attorney General-elect [Jason Miyares announced key members](#) of his leadership team, including the chief deputy, solicitor general, deputy attorneys general, and other senior staff members.

On December 7, the Senate confirmed Clare Connors as the U.S. attorney for Hawaii. Connors, appointed by Gov. David Ige, served as Hawaii’s attorney general since January 2019.

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FTC REGULATORY PRIORITIES

FTC Releases 2022 Statement of Regulatory Priorities

By Abbey Thornhill and Siran Faulders

Last month, the Federal Trade Commission (FTC or Commission) published its [Statement of Regulatory Priorities](#)

(Statement), announcing its regulatory agenda for 2022. The Statement suggests that the agency will focus largely on rulemaking. New rules will seek to advance President Biden's agenda of promoting competition in the American economy.

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TOBACCO AND CBD UPDATES

New York Hemp Regulations Revised as State's Comprehensive Hemp and CBD Program Gets Underway

By [Bryan Haynes](#), Tanner Brantley, and Christina Sava

Introduction

Although marijuana legalization continues to be a hot topic in the new year, it is noteworthy that the federally legal hemp industry continues to develop across the country. New York, one of the nation's major markets, now counts itself among the states with a fully regulated hemp cultivation, processing, and retail program. The New York Cannabis Control Board (CCB) approved supplementary rules for the state's Cannabinoid Hemp Program (CHP) at its December 16, 2021 meeting. These additional regulations expand the regulations finalized at the CCB's November 3, 2021 meeting, which officially launched the CHP and expanded the Medical Cannabis Program. As stated by Board Member Jen Metzger, "The proposed regulations we are releasing for public comment today will enable our hemp farmers to grow their businesses by processing their own flower, and will also establish a clear definition of 'craft' for labeling and marketing purposes, which will empower consumers to make informed choices while supporting sustainable small businesses." Additionally, the regulations continue the trend of states stepping in to regulate hemp and CBD products in light of the FDA's failure to do so.

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In a First, FDA Authorizes Marketing of Low-Nicotine Cigarette as "Modified Risk Tobacco Product"

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

Some cigarette pack labels may soon feature the phrases "95% less nicotine," "helps reduce your nicotine consumption," and "... greatly reduces your nicotine consumption." On December 23, 2021, the Food and Drug Administration (FDA) issued [modified risk granted orders](#) to 22nd Century Group, Inc.'s VLN King and VLN Menthol King cigarettes, allowing the company to market the low-nicotine cigarettes with these proposed reduced exposure claims if the company adds the phrase "Helps you smoke less." Of course, the company's products will continue to be required to bear one of four [Surgeon General's warnings](#) for cigarettes.

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CRYPTO UPDATES

State Coordination Will Continue to Regulate Use of Bitcoin

By [Stephen Piepgrass](#), [James Stevens](#), [Chris Carlson](#), and [Namrata Kang](#)

In this *Bitcoin Magazine* article, Troutman Pepper attorneys Stephen Piepgrass, James Stevens, Chris Carlson, and Namrata Kang discuss how in the absence of clear federal policy around emerging cryptocurrency-related technologies, state attorneys general will continue to take coordinated actions to regulate the industry. Recent enforcement actions against [BlockFi](#) and [Celsius](#) demonstrate that state regulators view digital assets through a consumer protection lens. With the continued rise of cryptocurrency, we expect to see an increase in coordinated enforcement actions by state attorneys general.

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CFPB UPDATES

CFPB Bans Third-Party Payment Processor and Its Founder for Ignoring Fraud and Supporting Scammers

By [Keith J. Barnett](#), Timothy Butler, [Carlin McCrory](#), and Matthew White

On January 18, the Consumer Financial Protection Bureau (CFPB) filed a proposed final judgment and order in its March 2021 lawsuit against BrightSpeed Solutions, a third-party payment processor, and its founder, Kevin Howard. If the court enters the final judgment and order, both BrightSpeed and Howard will be permanently barred from multiple consumer financial industries, and Howard will be required to pay a \$500,000 civil monetary penalty to the CFPB.

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CFPB Requests Public Input on Fees for Financial Products

By [Keith J. Barnett](#), [James Stevens](#), and [Carlin McCrory](#)

On January 26, the Consumer Financial Protection Bureau (CFPB or Bureau) [announced](#) its request for the public to share its input on “exploitative junk fees charged by banks and financial companies” to form its rulemaking and guidance agenda, along with its enforcement priorities. The CFPB’s press release included a link to its “Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services” (Request for Information).

[Read more](#)

Challenges to Payday Rule’s Ability to Repay Provisions Denied

By [Keith J. Barnett](#), Timothy Butler, [Carlin McCrory](#), and Matthew White

On January 14, a D.C. federal judge granted the Consumer Financial Protection Bureau’s (CFPB) motion to dismiss a case filed by the National Association for Latino Community Asset Builders (NALCAB), after the NALCAB contested the CFPB’s decision to repeal the ability to repay requirements.

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ATTORNEY GENERAL PROFILE: INDIANA

Indiana Attorney General Reiterates Policy Priority to Pursue Robocallers

By [Seth Erickson](#) and [Ethan G. Ostroff](#)

Indiana Attorney General Todd Rokita started 2022 by [announcing](#) his intention to continue aggressively pursuing robocallers and summarizing the actions taken by his office in 2021. This included calling on the Federal Communications Commission (FCC) to revise its rules to increase accountability, implementing new technologies to shorten the time for the AG to investigate complaints concerning robocalls, and litigating to ensure that consumers are protected against robocalls.

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ANTITRUST LAW ENFORCEMENT

DOJ Antitrust Chief Wants to Litigate Proposed “Anticompetitive” Mergers

By Ketan Bhirud and [Namrata Kang](#)

On January 24, Assistant Attorney General of the Antitrust Division Jonathan Kanter [delivered remarks](#) to the New York State Bar Association Antitrust Section. In his speech, Kanter expressed serious concerns over the recent increase in the concentration of industries and decrease in competition. Kanter believes that the “only way” to continue promoting competition is by aggressively adapting antitrust law enforcement to reflect today’s market realities.

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STATE AGS AUTHORITY TO ENFORCE

State AGs Urge FDA to Listen Up and Preserve The States’ Consumer Protection Authority

By [Agustin Rodriguez](#) and [Chris Carlson](#)

On January 18, the National Association of Attorneys General (NAAG) sent a [letter to the U.S. Food and Drug Administration](#) (FDA), urging the agency to expressly ensure that state attorneys general (State AGs) continue to have the authority to enforce state consumer protection laws on the sale of hearing aids. This action aligns with the State AGs’ goal of preserving their authority to enforce state laws and sensitivity toward any potential federal encroachment that would preempt their authority.

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EPA UPDATES

Biden Administration Presses Forward With Revised WOTUS Rule

By [Ryan Strasser](#), Tanner Brantley, [Morgan Gerard](#), and [Tim McHugh](#)

The Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (the “Corps”) (together the “Agencies”) have continued working on a [proposed rule](#) to revise the definition of “waters of the United States” (WOTUS) under the Clean Water Act (CWA or Act), which will soon move to the next stage of agency consideration.^[1] The outcome of these rulemaking efforts will impact countless regulated parties, from solar developers to manufacturers, and heavily regulated industry.

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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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