

# Troutman Pepper State Attorneys General Monitor – July 2022

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## ***Regulatory Oversight Podcast***

### **STATE ATTORNEYS GENERAL CALL ON FINANCIAL GIANTS TO ELIMINATE OVERDRAFT FEES**

By [Stephen Piepgrass](#), [Chris Carlson](#), [Susan Nikdel](#), and [Chris Willis](#)

Please join Troutman Pepper Partner Chris Willis and guests Troutman Pepper Associates Chris Carlson and Susan Nikdel as they discuss the multistate coalition of state attorneys general calling on many of the nation's largest banks to eliminate overdraft fees. The conversation focuses on what was done, which state attorneys general participated, the current controversy surrounding overdraft fees, and several key takeaways for the industry going forward.

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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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## **Cannabis Updates**

### **STATE AGS CALL ON CONGRESS TO COMBAT THC PRODUCTS ATTRACTIVE TO YOUTH**

By [Agustin Rodriguez](#), [Chris Carlson](#), and Christina Sava

On June 23, the Virginia and Nevada attorneys general sent a letter on behalf of a bipartisan coalition of 23 state attorneys general, expressing concern about edible products containing tetrahydrocannabinol (THC) sold in packaging to look like popular snacks and sweets.

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## **ALCOHOL REGULATION AS A MODEL FOR CANNABIS REGULATION: THE BENEFITS AND DRAWBACKS**

By [John West](#), [Agustin Rodriguez](#), Christina Sava, [Nick Ramos](#), and [Chelsey Noble](#)\*

The rapid evolution of the cannabis industry in the United States poses many unique questions, the most interesting of which is what cannabis regulation will look like under federal legalization. Although (legal) cannabis is a brand new industry, it is not the first time the United States has come out of a prohibition era. The cannabis industry can learn from the regulatory schemes governing the alcohol industry to assist with a smoother transition into an era where recreational use of cannabis is no longer a taboo in our society. This article provides an overview of the current regulatory systems for both industries, the key regulatory agencies, the merits of the alcohol industry's three-tier system as a model for cannabis, and the applicability of direct-to-consumer (DTC) alcohol laws to cannabis.

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## **VIRGINIA CANNABIS CONTROL ACT: A TALE OF TWO LEGISLATURES**

By [Agustin Rodriguez](#) and Christina Sava

It was the best of times... the passage of the Virginia Cannabis Control Act (CCA) in 2021 was celebrated by many as the first bill in the South to legalize adult-use cannabis (read about the status of cannabis programs in other Southern states [here](#)). It was also heralded as the success of a Democrat-controlled legislature and of outgoing Democratic Governor Ralph Northam. Few people understood, however, that many portions of the CCA required ratification by the 2022 Virginia General Assembly, which ushered in a Republican majority in the state's House of Delegates and a Republican governor. This new General Assembly failed to reenact any portion of the CCA during its 2022 session. Although it seems likely that Virginia will move forward with an adult-use cannabis program at some point in the future, we no longer know when that will occur or what the program will look like. This post explores which provisions of the CCA are defunct and which have become valid law.

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## **Multistate Investigations**

### **PREPARING COMPANIES FOR A NEW DAY IN MULTISTATE AG INVESTIGATIONS**

By [Ashley Taylor](#), [Stephen Piepgrass](#), and [Ryan Strasser](#)

Until the early 2000s, companies developing innovative business models or technologies could make reasoned predictions regarding how their innovations would be treated by government by analyzing the text of statutes and implementing regulations and interpreting case law, enabling them to make calculated decisions about how to

proceed based on risk tolerance.

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## AG updates

### COLORADO AG ANNOUNCES SETTLEMENT FOLLOWING GAP FEE INVESTIGATION

By [Ryan Strasser](#), [Chris Carlson](#), and [Bonnie Gill](#)

On June 23, Colorado Attorney General Phil Weiser [announced](#) that his office had reached a settlement with Red Rocks Credit Union to refund Colorado consumers more than \$300,000 after the credit union failed to refund unearned guaranteed automobile protection (GAP) premiums entitled to consumers under state law.

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### STATE AG ON THE MOVE: VERMONT ATTORNEY GENERAL TJ DONOVAN

By Siran Faulders, [Chris Carlson](#), and [Namrata Kang](#)

On June 10, Vermont Attorney General TJ Donovan [announced](#) his resignation as attorney general as of Monday, June 20 to become the director of public policy and U.S. state strategies for Roblox, an online gaming company. This announcement comes following Attorney General Donovan's decision not to seek reelection after his two-year term ends in January 2023.

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## SEC's 2022 Regulatory Agenda

### SEC ANNOUNCES 2022 REGULATORY AGENDA

By [Jay Dubow](#), Tim Bado, and Thomas Cordova

On June 22, the Office of Information and Regulatory Affairs (OIRA) released the Spring 2022 Unified Agenda of Regulatory and Deregulatory Actions. OIRA is the government's central authority to review executive branch regulations. The report, which includes both short- and long-term regulatory actions that administrative agencies plan to take, notably included several contributions from the Securities and Exchange Commission (SEC).

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## Tobacco and Alcohol Updates

### BIPARTISAN COALITION OF 31 STATE AGS URGE FDA TO DENY MARKETING AUTHORIZATION FOR NON-TOBACCO NICOTINE PRODUCTS

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

On June 10, a bipartisan coalition of 31 state attorneys general, led by Idaho, Illinois, Nebraska, and Pennsylvania, sent a [letter](#) to Food and Drug Administration (FDA) Commissioner Dr. Robert M. Califf, asking the agency to reject premarket tobacco product applications (PMTAs) for all products that contain nicotine not derived from tobacco, also known as non-tobacco nicotine (NTN) or synthetic nicotine.

[Read more](#)

## FDA SET TO PROPOSE MAXIMUM NICOTINE LEVEL IN CIGARETTES

By [Nick Ramos](#), [Agustin Rodriguez](#), and [Bryan Haynes](#)

The US Food and Drug Administration (FDA) recently [announced](#) plans to publish a proposed rule that would establish a maximum nicotine level in cigarettes and certain “other combusted tobacco products.” At the moment, it is not clear what “other combusted products” FDA might have in mind. According to the [Spring 2022 Unified Agenda of Regulatory and Deregulatory Actions](#), FDA is targeting May 2023 to issue the proposed rule, but that could always change. Even if FDA were to issue the proposed rule in May 2023, the public notice and comment and rule finalization process will take much longer. Given the impact any final rule would have on the tobacco industry, it is likely many industry members will be very involved in the process and potentially challenge any final rule in court. Thus, it will be years before any rule takes effect, if ever.

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## NORTH CAROLINA BEER LABEL REGULATION RULED UNCONSTITUTIONAL

By [John West](#) and Matt Fay

A North Carolina (NC) federal judge recently ruled a NC Alcoholic Beverage Control (ABC) Commission regulation as an unconstitutional restriction on free speech. The regulation’s challenge occurred after the ABC Commission denied Flying Dog Brewery’s request for label approval on the basis the proposed label was in “bad taste” and “inappropriate.”

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*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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