

Troutman Pepper State Attorneys General Monitor – March 2022

WRITTEN BY

James W. Stevens | Sadia Mirza | Jay A. Dubow | Stephen C. Piepgrass | Siran S. Faulders | John S. West | Keith J. Barnett | Ashley L. Taylor, Jr. | Ethan G. Ostroff | Barry H. Boise | Bryan M. Haynes | Avi Schick | Kamran Salour | Whitney L. Shephard | Namrata Kang | Abbey Thornhill | Michael B. Jordan | Christina Sava | Jack Altura | Ketan D. Bhirud | Bonnie Gill | Lauren Tilashalski | Nicholas Ramos | Carlin A. McCrory | Ghillaine A. Reid | Agustin E. Rodriguez | Christopher Carlson | Daniel Waltz

Vol. 2022, Issue 3

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.

2022 State AG Election Update

2022 STATE AG ELECTIONS MAY SHIFT THE REGULATORY LANDSCAPE

By Siran Faulders and Ketan Bhirud

Originally Published in Law360

Traditionally viewed as their state's lead lawyer and top cop, state attorneys general have steadily increased their influence nationally over the past 20 years, taking on some of the country's leading lenders, insurers, banks and other businesses.

Sometimes working individually, but often banding together in multistate investigations and lawsuits, efforts by these attorneys general have frequently resulted in billions of dollars in penalties and robust injunctive relief.

Because a change in political party most often means a change in policies and priorities, elections have a critical impact when the result leads to the ouster of an incumbent attorney general or when the role transfers from one party to the other. And elections often act as the catalyst to reach a settlement, open an investigation or file a

lawsuit, even if the incumbent attorney general is not at significant electoral risk.

[Read the full article on Law360](#)

State AG Enforcements

YOUR COMPANY MAY BE A LIKELY TARGET OF STATE ATTORNEYS GENERAL. YOU MAY NOT SEE IT COMING.

By [Ashley Taylor](#) and [Chris Carlson](#)

Risk and compliance teams are familiar with potential enforcement from federal regulators. But action from state attorneys general (acting alone or in coalition) can take the unsuspecting business completely by surprise. And in recent years, those actions have grown more frequent, and the penalties more severe.

In this article published in *Corporate Compliance Insights*, Ashley Taylor and Chris Carlson, attorneys in Troutman Pepper's State Attorneys General Practice Group, provide tips on how to minimize exposure to enforcement from state attorneys general.

[Read the full article on Corporate Compliance Insights](#)

Right to Repair Movement

PRESIDENT BIDEN DOUBLES DOWN HIS SUPPORT FOR “RIGHT-TO-REPAIR” MOVEMENT

By [Stephen Piepgrass](#) and Abbey Thornhill

Last month President Joe Biden made headlines when he reiterated his support for “right-to-repair” rules, which he first announced in a July 2021 executive order (discussed in our previous article [here](#)). The executive order asked the Federal Trade Commission (FTC or Commission) to draft “right-to-repair” rules to increase consumers’ ability to repair equipment on their own or at aftermarket repair shops. The order also requested that the U.S. Department of Agriculture consider new rules intended to increase industry competition by examining intellectual property rights and potentially giving farmers the right to repair farming equipment.

[Read more](#)

Cannabis Updates

THE STATUS OF CANNABIS LEGALIZATION IN THE SOUTH

By [Agustin Rodriguez](#), [Nicholas Ramos](#), and Christina Sava

While cannabis legalization moves full steam ahead through much of the Northeast, the southeastern U.S. has been notably slow to uptake major reforms. These states haven’t made major headlines for their progressive cannabis policies, but together they constitute a major market that has, nevertheless, dipped its toe in the water. As such, we thought we’d take a moment to round up the status of cannabis legalization in the South, an area worth watching.

[Read more](#)

DC CIRCUIT SET TO WEIGH IN ON LAWFULNESS OF DEA RULE CONCERNING “HOT” HEMP

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

In the Agricultural Improvement Act of 2018 (also known as the 2018 Farm Bill), did Congress authorize hemp producers to handle “hot” hemp — cannabis byproducts that surpass the legal limit of delta-9 tetrahydrocannabinols (THC) — during the hemp production process? Or does such material remain a Schedule I controlled substance subject to U.S. Drug Enforcement Administration (DEA) enforcement? The D.C. Circuit Court of Appeals might soon decide.

[Read more](#)

California Privacy Updates

CALIFORNIA AG ISSUES CCPA NOTICES TO BUSINESSES OPERATING LOYALTY PROGRAMS

By [Stephen Piepgrass](#), [Kamran Salour](#), [Ashley Taylor](#), [Jack Altura](#), [Sadia Mirza](#), [Whitney Shephard](#), and [Daniel Waltz](#)

On January 28, California Attorney General Rob Bonta announced that his office was beginning an “investigative sweep” of businesses operating consumer loyalty programs in California. The California AG’s [press release](#) stated that letters were sent to “major corporations in the retail, home improvement, travel, and food service industries” and allege the recipients’ potential noncompliance with the California Consumer Privacy Act (CCPA)’s requirement that the material terms of the financial incentive program are clearly described. Under the CCPA, businesses that offer consumers promotions, discounts, and other deals in exchange for collecting, keeping, or selling a consumer’s personal information must provide a “notice of financial incentive” that clearly describes the material terms of the financial incentive program to the consumer prior to opting in. Recipients of a CCPA notice are given 30 days to cure and come into compliance with the law before an enforcement action can be initiated. Failure to comply could place a business at risk of civil penalties.

[Read more](#)

NFT Risks

DEPARTMENT OF TREASURY RELEASES STUDY ON MONEY LAUNDERING RISKS IN ART AND NFTS

By [Keith Barnett](#) and [Carlin McCrory](#)

On February 4, the Department of the Treasury (Treasury) released the “[Study of the Facilitation of Money Laundering and Terror Finance through the Trade in Works of Art](#)” (Study). The Study assesses the various risks of the high-value art market based on its propensities for money laundering and illicit financing.

[Read more](#)

AG Profiles – New Jersey and North Dakota

GOVERNOR PHIL MURPHY ANNOUNCES MATT PLATKIN AS NEW JERSEY’S NEXT ATTORNEY GENERAL

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

On February 3, Governor Phil Murphy [announced the nomination](#) of Matt Platkin as the next attorney general of New Jersey, subject to Senate confirmation. Platkin previously served as policy director to Murphy in his gubernatorial campaign and then as the governor’s chief counsel.

[Read more](#)

NEW AG ON THE BLOCK: NORTH DAKOTA ATTORNEY GENERAL DREW WRIGLEY

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

On February 8, Governor Doug Burgum [appointed Drew Wrigley](#) as the new North Dakota attorney general. Wrigley was sworn in on February 9, and will serve out the remainder of the four-year term of North Dakota attorney general Wayne Stenehjem, who unexpectedly passed away on January 28. Wayne Stenehjem was a widely respected attorney general who was celebrated for his extensive public service. Stenehjem was the state’s longest-serving attorney general, having been elected to the position in 2000, after 24 years in the North Dakota Legislature.

[Read more](#)

Regulatory Updates

OCC DEFEATS AGS’ CHALLENGE TO “VALID WHEN MADE” RULE

By [James Stevens](#) and [Carlin McCrory](#)

On February 8, a Northern District of California judge ruled on cross motions for summary judgment filed by the states of California, Illinois, and New York (plaintiffs) and the Office of the Comptroller of the Currency and Michael Hsu in his capacity as acting comptroller of the currency (collectively, the OCC) on the validity of the “valid when made” rule.

[Read more](#)

CFPB Updates

CFPB UPDATES EXAM PROCEDURES FOR REMITTANCE TRANSFERS

By [Keith Barnett](#), [Ethan Ostroff](#), and [Carlin McCrory](#)

On February 14, the Consumer Financial Protection Bureau (CFPB) updated its [Supervision and Examinations Manual](#) to reflect changes it made to the Remittance Transfer Rule (Rule) in a [final rule](#) published on June 5,

2020. The changes made to Subpart B of Regulation E, effective July 21, 2020, (1) increased the Rule's safe harbor for compliance from 100 remittance transfers to 500 remittance transfers annually and (2) created two new permanent exceptions that permit insured institutions to disclose estimates of particular fees and exchange rates if certain conditions are met.

[Read more](#)

SEC Settlements

SEC SETTLEMENT SHOWS COMMISSION'S WILLINGNESS TO WAIVE PENALTIES FOR INVESTIGATORY TARGETS FOCUSING ON CORRECTIVE ACTION

By [Jay Dubow](#), [Ghillaine Reid](#), and Lauren Lisauskas

On January 28, the Securities and Exchange Commission (SEC or Commission) issued a press release, announcing the settlement of various fraud charges against a private technology company in light of their "significant remedial efforts" made during the course of an internal investigation into alleged misconduct by the firm's former CEO. A demonstration of regulatory pragmatism, this matter is indicative of the Commission's willingness to credit investigatory targets that take holistic, corrective action.

[Read more](#)

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

RELATED INDUSTRIES + PRACTICES

- [Consumer Financial Services](#)
- [Enforcement Actions + Investigations](#)
- [Financial Services](#)
- [Health Care + Life Sciences](#)
- [Privacy + Cyber](#)
- [State Attorneys General](#)
- [Tobacco + Nicotine](#)
- [White Collar Litigation + Investigations](#)