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Troutman Pepper State Attorneys General Monitor – October 2022

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REGULATORY OVERSIGHT PODCAST

A CONVERSATION WITH NEVADA ATTORNEY GENERAL AARON FORD

In Episode 8 of the *Regulatory Oversight Podcast*, Nevada Attorney General Aaron Ford joins Troutman Pepper RISE attorneys Stephen Piepgrass and Ketan Bhirud to discuss a range of topics, including recent consumer protection actions and emerging trends his office examined over the past several years, and the criteria considered when determining to begin an investigation and when to take enforcement action.

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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.

STATE FALSE CLAIMS ACT

THE RISING TIDE OF STATE FALSE CLAIMS ACT CASES

By Stephen C. Piepgrass, Ashley L. Taylor, Jr., & Amy Pritchard Williams

When it comes to false claims cases, the federal False Claims Act tends to be the first thing attorneys think of. That may be because the federal statute tends to get a lot of publicity — with good reason. According to the U.S. Department of Justice (DOJ), it secured more than $5.6 billion in False Claims Act settlements and judgments in

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the fiscal year that ended September 30, 2021. Since 1986, when Congress strengthened the federal False Claims Act by providing more attractive incentives for whistleblowers, the DOJ has secured more than $70 billion in settlements and judgments.

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REMOTE WORK GUIDANCE FOR LICENSED LENDERS

COLORADO AG WEISER ISSUES REMOTE WORK GUIDANCE FOR LICENSED LENDERS

By Michael Yaghi & Namrata Kang

In June 2022, Colorado enacted HB22-1410, a law governing remote work for licensed lenders. Specifically, the law amends the Uniform Consumer Credit Code by permitting employees of a supervised lender to work remotely. A "remote location" is defined in the law as "a private residence of an employee of a licensee or another location selected by the employee and approved by the licensee."

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CLASH OVER GUN STORE MERCHANT CODE

REPUBLICAN AGS TAKE AIM AT MAJOR CREDIT CARD PROVIDERS OVER NEW GUN STORE MERCHANT CODE

By Stephen C. Piepgrass & Tim Bado

Two dozen Republican attorneys general (AGs), led by Tennessee Attorney General Jonathan Skrmetti and Montana Attorney General Austin Knudsen, sent a letter to the CEOs of credit card giants Visa, American Express, and Mastercard, warning them to halt plans that would add a new merchant category code for gun retailers. The International Organization for Standardization (ISO) recently voted to create the new merchant category code for gun stores to use when processing credit and debit card transactions. The letter argues the ISO's vote was prompted by years of pressure "from ideologues and accomplished via an application by the union-owned Amalgamated Bank."

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DEMOCRATIC AGS FIRE BACK IN SUPPORT OF GUN SALE MERCHANT CODE

By Stephen C. Piepgrass & Tim Bado

On September 30, 11 Democratic attorneys general (AGs), led by the AGs of the District of Columbia, New Jersey, and Delaware, sent a letter in support of major credit card companies Visa, Mastercard, and American Express adopting a new merchant category code for the sale of firearms. The letter from leading Democratic AGs follows a letter from two dozen Republican AGs to the credit card companies, opposing the adoption of the merchant code.

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POTENTIAL BIAS IN ARTIFICIAL INTELLIGENCE?

CALIFORNIA AG SENDS LETTER TO HOSPITAL CEOS ON USE OF ARTIFICIAL INTELLIGENCE

By Michael Yaghi & Natalia Jacobo

California Attorney General Rob Bonta sent a letter to hospital CEOs on potential bias in artificial intelligence as part of a growing trend among attorneys general and lawmakers concerning bias in machine learning.

On August 31, California Attorney General (AG) Rob Bonta sent a letter to hospital CEOs across California, opening an inquiry about potential bias in their use of technology. In his letter, Attorney General Bonta requested information from health care facilities and other providers on how they identify and address racial and ethnic disparities in commercial decision-making tools. The health care industry, like other industries, has expanded its use of algorithms, with health care companies utilizing algorithms in various ways, ranging from administrative work to determining whether patients need a referral or specialty care.

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FTC UPDATES

FTC RELEASES SECOND REPORT ON E-CIGARETTE SALES AND ADVERTISING IN THE US

By Bryan Haynes & Nick Ramos

In a recent press release, the Federal Trade Commission (FTC) issued its second e-cigarette report, analyzing domestic sales and marketing trends for the years 2019 and 2020. While FTC has issued a similar report for cigarettes and smokeless tobacco products since 1967 and 1987, respectively, it only recently decided to analyze this type of data for e-cigarettes. FTC collected information from the nation's largest domestic e-cigarette manufacturers (reporting companies) that account for almost the entire U.S. e-cigarette market. The e-cigarette report is important because it will likely serve as a basis, at least in part, for considering future policies with respect to e-cigarettes sold in the U.S.

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FTC AND SIX STATES SUE ROOMSTER OVER ALLEGED DECEPTION, INCLUDING FAKE REVIEWS

By Michael Yaghi & Robert Claiborne

The FTC and six states allege violations of the FTC Act and various state statutes, prohibiting deceptive trade practices (state UDAP statutes) at a cost of over $27 million to consumers.

Roomster Corp. (Roomster) operates a website and app that can be used, in exchange for payment, to find and connect with roommates or rooms/properties to rent. On August 30, the Federal Trade Commission (FTC) and the attorneys general of California, Colorado, Florida, Illinois, Massachusetts, and New York (collectively, the states)

filed a complaint against Roomster in the U.S. District Court for the Southern District of New York. According to the FTC and the states, Roomster committed various legal violations when posting online reviews about its service and allegedly fake listings.

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CANNABIS UPDATES

UNCERTAINTY ENSUES AROUND SALE OF DELTA-8 THC IN VIRGINIA

By Agustin Rodriguez & Christina Sava

Is delta-8 tetrahydrocannabinol (THC) legal to sell in Virginia? We previously reported that the legislature rejected the governor's attempts to stymie sales of delta-8 THC, but recent developments in the commonwealth call into question the legal status of the popular cannabinoid with respect to foods and beverages.

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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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