

LAW WEEK

COLORADO

What Businesses Should Expect from Colorado's New Attorney General

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For the first time since 2002, Colorado elected a Democrat, Phil Weiser, to serve as attorney general. The prevailing wisdom is that this development portends more aggressive regulation and enforcement and, in the current political climate, increased actions against the federal government.

Certainly, that will be the case with Weiser — he has already talked about expanding efforts to hold industry participants accountable for the opioid epidemic, increasing penalties for companies perpetrating financial scams and generally looking to file more actions against companies putting consumers at risk, intentionally or recklessly. He's also joined a number of lawsuits opposing the federal government's actions related to the environment and health care.

We should expect him to also join in consumer protection-related lawsuits against the federal government brought by other Democratic attorneys general, including a lawsuit against the U.S. Department of Education for not enforcing an Obama-era rule designed to provide information regarding rates of post-graduation employment of for-profit college and vocational program students.

Moreover, state attorneys general frequently provide comments letters on proposed federal laws and rules, and we should expect to see Weiser sign or co-sponsor comments reflecting opposition to less consumer-friendly initiatives, such as proposed laws that would preempt state consumer protection law applicability to federal student loan servicers. Businesses should be looking to these letters and comments as indicators of Weiser's priorities and his willingness to push the enforcement envelope.

Finally, given his strong antitrust and technology focus throughout his career, we should look for Weiser to be a leader in multistate actions related to these areas, particularly in antitrust actions addressing the dominance of certain technology platforms, and multistate investigations of data privacy concerns.

This is not to say that businesses should just be preparing for closer scrutiny of their practices. Weiser has also repeatedly referenced community partnerships as a way to accomplish his objectives, and he supports innovation and entrepreneurialism, including citing to those principles as a reason to hold bad actors accountable so businesses are free to grow and innovate on a level playing field.

His founding of Silicon Flatirons at the University of Colorado Boulder, which brings together students, academics and industry participants to drive innovation in technology law and policy, illustrates his dedication to both public-private partnership and innovation. This means that businesses should not only be taking a fresh eye to their legal compliance but also should be thinking about ways they can participate in Weiser's agenda. Below are a few areas Weiser will likely be addressing with a combination of enforcement and community involvement.

OPIOIDS

Weiser emphasized his dedication to addressing the opioid crisis on the campaign trail and continues to list this as a top priority for his administration. He will aggressively prosecute the lawsuit his predecessor, Cynthia Coffman, filed against Purdue Pharma (manufacturer of Oxycontin) and indicated at the Colorado Department of Law's Joint Budget Committee hearing that he wants to expand this lawsuit to include other opioid manufactur-

ers, distributors and possibly others in pharmaceutical sales and distribution, similar to lawsuits several Colorado cities and counties filed last month. But Weiser has also mentioned looking at improving and expanding treatment options and considering prison reform as other ways to combat the opioid crisis, opening the door for health care concerns to start a dialogue with his Office of Community Engagement about developing a more comprehensive treatment infrastructure. Colorado is part of a multistate effort to hold the opioid industry accountable that has been folded into a multidistrict litigation in Ohio, and it is likely we will see these cases ultimately resolved through settlement rather than litigation. This means that the bulk of the work to be done to address this crisis will be building out means for treatment and substance abuse prevention with settlement funds.

FINTECH

This area will prove to be an interesting convergence of Weiser's promotion of technological innovation and his strong consumer protection focus. The fintech industry's emerging services have the potential to expand consumer credit availability but have drawn scrutiny from attorneys general and other regulators — e.g., the Conference of State Bank Supervisors filed a lawsuit against the Office of the Comptroller of the Currency to prevent it from issuing national bank charters to fintech companies. On the other side of the spectrum, Arizona Attorney General Mark Brnovich established a fintech regulatory "sandbox" program last year designed to encourage innovation in consumer financial products and services. Companies availing themselves of the sandbox program can operate without being subject to licensure for two years, thus avoiding liability for not following the

substantive requirements that apply to the product or service. While these companies are still subject to attorney general oversight and Arizona's Consumer Fraud Act, they enjoy a relaxed regulatory environment in order to foster innovation. Given Weiser's support for technological innovation, he could be receptive to overseeing a fintech sandbox in his administration, as there have already been discussions in Colorado about establishing a similar regulatory sandbox for cryptocurrency and blockchain. Companies in the fintech space should consider approaching Weiser and his new chief innovation officer to talk about how their services use technology to benefit consumers and how a fintech sandbox might benefit Coloradans.

FINANCIAL SCAMS

Weiser has articulated a threefold approach to the financial scams that continue to plague consumers, primarily through fraudulent phone calls. In addition to increasing penalties for such scammers, Weiser cites to improving restrictions on access to numbers on the Do Not Call list and developing technological solutions to prevent scam calls from ever reaching consumers. Again, Weiser's comprehensive approach to eradicating financial fraud lends itself to partnerships with private entities that can help to implement structural solutions to these issues.

In sum, businesses operating in Colorado should expect increased scrutiny of their business practices and prepare accordingly. But they should also think about proactively developing relationships with Weiser such that they can be a part of his commitment to approach his job with a combination of innovation and collaboration. •

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