

CONNECTICUT ATTORNEY GENERAL'S OFFICE – PRIVACY ENFORCEMENT AND THE CONNECTICUT DATA PRIVACY ACT

APRIL 25, 2023

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TOPICAL DISCUSSION

Privacy and Data Security in Connecticut: Agenda

- CT AGO Privacy Section
- Statutory Backdrop: CT Breach & Privacy Laws
- AGO Privacy Enforcement: Breach & Privacy Cases
- CT's new Data Privacy Act

Connecticut Attorney General's Office: Privacy Section

- Privacy Task Force created in 2011
- Standalone Privacy Section formed in 2015

Statutory Backdrop: Connecticut Unfair Trade Practices Act (“CUTPA”)

- No person shall engage in unfair or deceptive acts in the conduct of trade or commerce
- Penalties: up to \$5k/ willful violation

Statutory Backdrop: Connecticut Safeguards Law

- Requires any person in possession of personal information (PI) to safeguard data against misuse by third parties, and destroy, erase or make unreadable such data prior to disposal
- PI defined broadly as “information capable of being associated with a particular individual through one or more identifiers...”
- Penalties: \$500/ intentional violation, up to \$500k for single event

Statutory Backdrop: Connecticut Breach Notice Law

- Unauthorized access to or acquisition of Personal Information (PI) not secured by encryption or otherwise made unreadable
- PI means name and any of the following:
 - SSN
 - Driver's License number
 - Credit or debit card number
 - Financial acct number (w/ access code)
 - Taxpayer ID number
 - IRS identity protection PIN
 - Passport number, military ID or other government ID
 - Certain medical information
 - Health insurance policy information
 - Biometric information
 - Online account credentials

Connecticut Breach Notice Law: What is Required?

- Notice to CT AGO and impacted CT residents without “unreasonable delay” (60-day outside limit)
- For compromised SSNs and ITINs, 2 years of ID theft prevention services required (i.e., credit monitoring)
- Violation is *per se* CUTPA violation

AGO Breach Investigations: Key Settlements & Takeaways

- **Equifax** (\$600M): governance and data security must go hand-in-hand
- **Uber** (\$148M): don't hide a breach
- **Anthem** (\$39.5M): employee training is critical
- **Target** (\$18.5M) and **Home Depot** (\$17.5M): security is only as strong as weakest link
- **Experian / T-Mobile** (\$15M): monitor vendors

AGO Privacy Investigations: Key Settlements

- **Google Streetview** (\$7M): collection of PI over unsecured WiFis
- **“Cookie cases”** (\$17M): circumvention of privacy settings to allow 3rd parties to place cookies on consumers’ browsers
- **Lenovo** (\$3.5M): ad software pre-installed on laptops without consumers’ knowledge (coordinated with FTC)
- **Google Location Tracking** (\$391.5M): states alleged deceptive collection of location data

Connecticut Data Privacy Act: Backdrop

- 6 states have now passed comprehensive consumer data privacy laws: CA, VA, UT, CO, CT, and IA.
- The Connecticut Data Privacy Act (CTDPA) grew out of a lengthy stakeholder process.
- CTDPA will take effect on **July 1, 2023**.

Connecticut Data Privacy Act: Consumer Rights

- Right to access
- Right to portability
- Right to correction
- Right to deletion
- Right to opt-out of
 - Targeted advertising
 - Sale
 - Profiling

Connecticut Data Privacy Act: Controller Obligations

- Controller: entity that alone or jointly determines the purpose and means of processing of personal data
- Obligations:
 - Data minimization
 - Transparency
 - Purpose limitation
 - Reasonable data security
 - Consent to process sensitive data
 - Consent to sell teens' data or target advertising to teens
 - Data protection assessments

Connecticut Data Privacy Act: Processor Obligations

- Processor: entity that processes personal data on a controller's behalf
- Processor must adhere to controller's instructions re: consumer rights requests
- Contract between controller and processor shall govern data processing

Connecticut Data Privacy Act: AGO Enforcement

- AG has exclusive authority to enforce
- Cure period: beginning on **July 1, 2023**, and ending on **Dec. 31, 2024**, AG shall, prior to initiating action, issue a notice of violation to the controller *if the AG determines that a cure is possible*. If the controller fails to cure such violation within 60 days, AG may bring an action.
- Violation is a *per se* violation of CUTPA

Connecticut Data Privacy Act: Preparing for Compliance

- Determine applicability
- Inventory data
- Minimize data
- Review/ update privacy policies
- Operationalize consumer rights
- Review/ update vendor contracts
- Employee training

QUESTION AND ANSWER

Q&A Round: Background and Policy

- How is the AG selected in your state?
- How is consumer protection organized in your office?
- How are consumer protection priorities set in your office?
- Do you participate in multistate consumer investigations?
- Do you receive consumer complaints?
- Do you perform any complaint resolution role?

Q&A Round: State-Specific UDAP Law

- Are you able to conduct pre-suit investigations by statute?
- Can you request documents? Take statements? Send interrogatories?
- Are CIDs confidential? Are answers confidential?
- Does your law allow a party to object or set aside? If so, in what timeframe?
- How can you enforce compliance?
- Do you have a statute of limitations? If so, what is it?
- Do you have to provide pre-suit notice? If so, what timeframe?

Q&A Round: Remedies and Other Laws

- What types of settlements can you enter into?
- Can you obtain restitution? Disgorgement?
- Are there times you don't get injunctive relief? Penalties/payment?
- How are IR terms enforced? What if they are in an AVC?

THANK YOU



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Our Next State AGO Webinar

- **Nebraska Attorney General's Office – Consumer Protection in an AG Transition**

Thursday, May 4, 2023 at 4:00 pm ET

Guest Speakers:

- Attorney General Mike Hilgers
- Phil Carlson, Consumer Protection Division Chief

Hear practical information on the Nebraska Attorney General's Office and its state consumer protection laws. Attorney General Hilgers and Mr. Carlson will also discuss consumer protection in an AG transition and the factors taken into account when reviewing the structure and resources of the division, enforcement priorities, and collaboration with others, including attorneys general, the federal government, and businesses.

Be on the lookout for an invite for our next State AG webinar, and visit www.kelleydrye.com/News-Events for information on all our events.



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