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Florida May Pass The Most Burdensome Privacy Law in the Country: Are You Ready?

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POLICY DRAFTING



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SHOOK'S
**Privacy +
Data Security**
Services

GLOBAL INCIDENT
RESPONSE



INCIDENT
READINESS



COMPLIANCE



LITIGATION



TRAINING



Agenda

- 1. Dueling Privacy Bills
(HB 969 v. SB 1734)**
- 2. Compliance Burdens**
- 3. Litigation Gone Wild**
- 4. Path Forward for Legislation**



A chess knight piece, which is a horse's head and neck, is positioned on the left side of the slide. It is a dark, metallic-looking piece with a detailed mane and a small crown on its head. The piece is set on a chessboard with a light and dark square pattern. The background of the entire slide is a solid purple color.

SECTION - 1

The Dueling Privacy Bills



HB 969



- Scope
 - Greater than \$25M in annual revenue
 - Buy, receive, sell, or share personal information of 50k or more consumers, households, or devices
 - 50% or more of global revenue from selling or sharing personal information about consumers
- Personal Information (PI)
 - Any information that relates to a particular consumer or household or is reasonably capable of being associated with a particular consumer or household.



Examples of Personal Information

- Sensitive info (SSNs, DL#s, CC#s)
- Email address
- Protected classification info (Mr./Mrs.)
- Biometric information
- Internet or other electronic network activity (browsing history, search history, consumer's interaction with an Internet website, application, or advertisement)
- Geolocation
- Audio, visual, or olfactory information
- Professional/employment-related info
- Educational info
- Inferences drawn about a consumer's preferences, characteristics, behavior, abilities, and intelligence.



HB 969 Requirements (1 of 2)



- Maintain an **online privacy policy** and a “**just in time**” **privacy notice**
- **Provide a copy** of PI to consumer when requested
- Implement a **retention schedule** prohibiting use/retention of PI after initial purpose is satisfied or one year after consumer’s last interaction with the business
- **Delete or correct PI** when requested by consumer
- **Right to know** what PI is sold or shared with third parties



HB 969 Requirements (2 of 2)

- Right to **opt out** of the sale or sharing of PI to third parties
- **Opt-in** requirement for the sale or sharing of information for minors under 16
- **Cannot discriminate** against consumers who exercise their privacy rights
- **Contract with third parties** with whom you share PI to limit their use of the PI
- Add a *“Do Not Sell or Share My Personal Information”* link to your website.



HB 969 Exceptions



- PI for employees, applicants, interns, or volunteers
- Health information, covered entities, and business associates under HIPAA
- PI governed by
 - the Fair Credit Reporting Act
 - the Gramm-Leach-Bliley Act
 - the Driver's Privacy Protection Act
 - the Family Educational Rights and Privacy Act

A chess knight piece, rendered in a dark purple color, is positioned on the left side of the slide. The knight is facing right and is placed on a chessboard with a purple and white checkered pattern. The background of the entire slide is a solid, medium purple color.

SECTION - 2

Compliance Burdens and the Private Right of Action



HB 969 Compliance Burdens (1 of 2)

- Legal fees to understand and comply with the law - \$50,000 to \$200,000
- Data Inventory - \$40,000 to \$120,000
- Solutions to keep the inventory evergreen - \$40,000 to \$200,000 per year
- Consultants to develop and implement a data subject access request process - \$50,000 to \$75,000



HB 969 Compliance Burdens (2 of 2)

- Cybersecurity risk assessment - \$25,000 to \$130,000 per year
- Cyber insurance - \$10,000 to \$100,000 per year
- Training - \$20,000 to \$75,000 per year
- Hiring additional staff - \$45,000 to \$110,000 per year

GRAND TOTAL = approximately **\$300,000 to over \$1 million**, most of which is not a one-time cost.



HB 969 Private Cause of Action

- If PI (broadly defined) is subject to a data breach and the business failed to implement and maintain reasonable security procedures and practices, the consumer can sue for:
 - Damages in the amount of \$100 to \$750 per consumer per incident
 - Injunctive or declaratory relief



HB 969 Private Cause of Action

- Consumers can also sue for those same damages if the business does not delete, correct, or execute opt-out as requested.
- The plaintiff can seek attorney's fees.
- Some examples
 - Data breach of meal preferences, allergy information, behavior
 - Incorrect statement in privacy notice
 - Failure to delete PI in backup files

SB 1734 (Florida Privacy Protection Act)

- Key Differences from HB 969
 - Most requirements are limited to companies that sell or share PI
 - Exceptions – online privacy policy; adopt reasonable security procedures and practices
 - Right to sue is much broader – for any violation of the law and for data breaches
 - E.g., an inaccurate privacy policy could result in a class action lawsuit of \$100M to \$750M.
- Plaintiff's lawyer can recover attorney's fees

A chess knight piece, rendered in a dark purple color, stands on a chessboard. The knight is positioned on the left side of the frame, facing right. The chessboard has a grid of squares, with the knight currently on a light-colored square. The background is a solid, deep purple color.

SECTION - 3

A Plaintiff's Lawyer's Dream Come True



Litigation Risks

- Cyber-attack that impacts PI (like your preference in the food you like or any allergies)
- Employee sends an email containing PI to the wrong person
- Consumer watchdog tests your ability to respond to a consumer request



SECTION - 4

The Path Forward



The Path Forward

- HB 969 – one more subcommittee, then a floor vote
- SB 1734 – two more committees, then a floor vote
- House Speaker and Senate President will decide which version to send to the other chamber
- Governor's signature

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Questions



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