

Conn. Data Privacy Enforcement Takeaways For Cos.

By **Paul Pittman and Abdul Hafiz** (March 1, 2024)

The Connecticut Office of the Attorney General has released its first report on enforcement of the Connecticut Data Privacy Act, or CTDPA, revealing its focus on companies' privacy policies, protections of sensitive data, such as genetic, biometric and geolocation data, and teen data.

The Connecticut attorney general also advocates in its report for a number of legislative changes that would "strengthen or clarify privacy protections under the CTDPA."

The CTDPA required the Connecticut attorney general to issue a report six months after its July 1, 2023, effective date detailing (1) the number of violation notices issued; (2) the nature of each violation; (3) the number of violations that were cured; and (4) any other relevant information.

Enforcement Actions in the First Six Months of the CTDPA

The Connecticut attorney general has focused its initial enforcement priorities on the following key areas.

Privacy Policy Review

The Connecticut attorney general initiated a review of privacy policies posted by companies covered by the CTDPA and issued 10 cure notices for deficiencies that included (1) inadequate or confusing disclosures; (2) a lack of any privacy disclosures; and (3) consumer rights — such as opt-out mechanisms — that were too burdensome for consumers to use, or broken or lacking altogether.

Sensitive Data

The Connecticut attorney general has prioritized enforcing the CTDPA's protections of sensitive data and reported that it has issued several related cure notices and inquiry letters. One cure notice was issued to a popular car brand based on privacy concerns around connected vehicles, which has also been an area of focus for the California Privacy Protection Agency.

An inquiry letter was sent to a major web service provider and retailer after that company announced a plan to deploy palm-recognition software for identification, age verification and payment, information that is likely to constitute biometric data under the CTDPA.

By way of further example, the Connecticut attorney general sent a cure notice to a grocery store after receiving consumer complaints and media coverage regarding the grocery store's use of biometric software for preventing and detecting shoplifting. As a final example, after a cybersecurity incident at a genetic testing and ancestry company, the Connecticut attorney general sent an inquiry letter seeking information on the company's data security and compliance with the CTDPA.



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Teen Data

The CTDPA provides for heightened protections for teens' personal data, and the Connecticut attorney general reports issuing one cure notice to a company that provides an anonymous messaging app directed at teens after an accountability group filed a complaint with the Federal Trade Commission. The cure notice addresses the company's information collection and sharing practices, as well as its use of targeted advertising.

Data Brokers

The Connecticut attorney general noted its focus on data brokers, given the "broad swaths of information [they] collect and collate on behalf of Connecticut residents." The Connecticut attorney general reports that one consumer complaint prompted the office to send both a cure notice to a company for targeted advertising and also an inquiry letter to the data broker that had identified that individual for their marketing list.

A Call for Legislative Changes

The Connecticut attorney general notably devotes a substantial portion of its report to recommendations for legislative changes to strengthen and clarify the CTDPA, arguing in several instances that those changes would also better align the law with other states, in particular California, Oregon and Delaware. The attorney general's recommendations include:

- Scaling back the "myriad of exemptions carving out entities from [CTDPA] requirements," including exemptions for nonprofits and entities covered by the Gramm-Leach-Bliley and Health Insurance Portability and Accountability Acts;
- Enacting a one-stop-shop deletion mechanism, similar to California's Delete Act, that will allow consumers to submit one verified request to delete personal data held by data brokers;
- Strengthening the right-to-know provisions by requiring more specific disclosures to consumers of third parties who receive their personal data from covered businesses;
- Expanding the definition of biometric data from "automatic measurements of an individual's biological characteristics, such as a fingerprint, a voiceprint, eye retinas, irises or other unique biological patterns or characteristics that are used to identify a specific individual" to one that covers biometric data that is "capable of doing so"; and

- Clarifying whether CTDPA protections of teens' data bans targeted advertising to teens altogether or whether the opt-out provision that applies to sale of personal data also applies to targeted advertising.

Consumer Complaints

The Connecticut attorney general's report highlights the inquiries and more than 30 complaints it has received from consumers and notes that it reviews all consumer complaints for issues or patterns indicative of CTDPA violations.

The report further notes that many complaints have related to consumers' interest in exercising their right to delete their personal data. According to the Connecticut attorney general, about a third of the complaints involved entities or data that were statutorily exempt from the CTDPA, including relating to publicly available data that was combined and repackaged for other purposes.

For example, the Connecticut attorney general received complaints from consumers relating to websites that would gather personal information from public records, such as court and property records, phone numbers and social media posts and thereby use that information to make individual profiles available online.

Nonetheless, even where the CTDPA does not permit the particular request, the Connecticut attorney general has reached out to businesses in an attempt to resolve consumers' complaints.

Key Takeaways

Adequate Privacy Policies

Covered businesses must continue to prioritize their external disclosures, namely online privacy policies.

Specifically, businesses that are subject to the CTDPA must ensure that they (1) publish privacy policies that fully inform Connecticut residents about their rights under the law; and (2) provide "clear and conspicuous" mechanisms allowing consumers to opt out of targeted advertising or sale of their data.

Complying With Consumer Rights Request

Consumers have regularly reported purported CTDPA violations mostly relating to exercising their rights. Businesses that are the subject of these complaints invite regulatory scrutiny. Businesses must ensure they comply with consumer requests to the extent afforded by the CTDPA while considering any exceptions to complying with such requests.

It is worth noting that the Connecticut attorney general has indicated that it investigates all complaints it receives.

Enforcement to Continue

The Connecticut attorney general has hit the ground running in tackling CTDPA violations and businesses should expect an increase in the Connecticut attorney general's enforcement efforts. This is particularly so in the areas that are the subject of consumer complaints, such

as those involving inadequate privacy policies, sensitive data, teen data and data brokers.

In addition, the Connecticut attorney general has even initiated reviews of businesses that it identified based on complaints submitted to other regulatory agencies, such as the FTC. Specifically, the Connecticut attorney general reviewed the privacy policy of a business based on a complaint filed with the FTC alleging the business's app was harmful to children.

Further, cybersecurity incidents that require disclosures to state attorneys general, regulatory agencies or public filings, e.g., the newly promulgated U.S. Securities and Exchange Commission's cybersecurity rules, may be the catalyst for investigations and enforcement actions.

Notably, the Connecticut attorney general has six full-time assistant attorneys general assigned to its privacy team. Despite the likely increased enforcement efforts, businesses are still able to take advantage of the CTDPA's right to cure — to the extent the Connecticut attorney general determines such a cure is possible — until Jan. 1, 2025.

As privacy compliance remains a priority for several regulators nationwide, businesses subject to other data privacy laws should take note of the parallels between their enforcement priorities. For example, as noted above, the California Privacy Protection Agency has taken an interest in connected cars' privacy concerns.

Likewise, in recent months, the FTC has used its Section 5 authority to enforce violations of biometric information in retail surveillance, and the Colorado attorney general has sent inquiries to entities relating to their processing of sensitive data.

Changes Ahead

As the Connecticut attorney general has called for modification to the CTDPA's text, the Connecticut Legislature may decide to amend the statute in line with the aforementioned recommendations or in line with other state data privacy laws. Businesses should continue to monitor any legislative developments and ensure timely compliance.

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