

Privacy & Data Security Law News

N.Y. Privacy Bill Carries Litigation, Enforcement Hike Potential

By Jake Holland

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- Bill allows consumers to sue over data violations
 - Attorney general would be tasked with rulemaking, enforcement
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A recently introduced privacy bill in New York could spur class action litigation and enforcement actions if eventually cemented into law.

Senate Bill 567, introduced Jan. 6, would require businesses to provide privacy notices and give consumers the right to know what personal information is being collected about them.

Both the California Consumer Privacy Act and proposed New York bill have broad definitions of personal information and would afford customers the right to access their personal information and request businesses not sell it, said Kyle Fath, a privacy and technology attorney at Baker & Hostetler LLP in New York.

The New York bill, however, has a much broader private right of action, allowing consumers to sue businesses for alleged violations, including technical noncompliance, Fath said. That could include incomplete privacy notices or inaccurate responses to consumer requests, he said.

The CCPA, by contrast, largely limits the private right of action to data breach incidents, making it harder for individuals to sue.

"If something like this passes with a global private right of action, litigation is certain to increase on that front," said Paul Greene, chair of Harter Secrest & Emery LLP's privacy and data security practice.

The bill also includes a provision that would give whistleblowers a portion of the civil penalties if the attorney general brings an action. That could incentivize people with nonpublic information to come forward and drive up enforcement numbers, Greene said.

Just as the California law tasked Attorney General Xavier Becerra (D) with rulemaking and enforcement of the law, the New York bill would give state Attorney General Letitia James (D) the ability to adopt regulations and go after supposedly noncompliant businesses.

Road Ahead

Both the New York House and Senate have a Democratic supermajority, which could increase the odds the privacy legislation makes its way to Gov. Andrew Cuomo (D)'s desk, Fath said.

"It may be more likely to pass because of that reason, but that's just one factor," he said. "There certainly will be very significant lobbying efforts against the private right of action."

New York is "highly likely" to pass comprehensive privacy legislation within the new few years, whether it be a version of this bill or another one, Greene said. It could come as soon as March, when the majority of lawmaking in New York gets done along with the budget, he said.

The legislation could have a big impact on the national privacy conversation given New York's large population and status as a business hub, and it could also result in an uptick in actions taken against businesses, said Melissa Krasnow, a privacy and data security partner at VLP Law Group LLP in Minneapolis.

"The New York attorney general's privacy enforcement is already strong" compared to other states, Krasnow said. "Something like this would give her more ammunition to enforce."

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