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CyberLaw Data Points:

Recent Data-Breach Legal Developments

CLIENT ALERT:

The House of Representatives Passes Two Sweeping Cybersecurity Bills.

April 24, 2015

The House of Representatives has passed two major cybersecurity bills. The House passed one bill - the Protecting Cyber Networks Act ("PCNA") – on April 22, 2015. The second bill – the National Cybersecurity Protection Advancement Act of 2015 ("NCPAA") – passed on April 23, 2015. The combined bills now go to the Senate for negotiations over an agreed bill on which both chambers will vote.

The bills are positioned as complementary pieces of legislation, though they differ in substantive respects, as outlined below. For a copy of the PCNA, go here. For a copy of the NCPAA, go here.

The PCNA has several major components aimed at incentivizing information-sharing while, at the same time, protecting personal information in the shared data. This information is to be submitted to the recently created Cyber Threat Intelligence Integration Center ("CTIIC"), which is "the primary organization within the Federal Government for integrating all intelligence possessed or acquired by the United States pertaining to cyber threats." The CTIIC, in turn, is to ensure that appropriate departments and agencies have full access to pertinent cyber-threat information, but only in a manner consistent with privacy protections as directed by the Attorney General.

The PCNA provides liability protections for businesses that share information, but only to a limited extent. Those businesses are protected against any claims based on "the sharing or receipt" of information in good faith and in accordance with the PCNA.

By contrast, the NCPAA provides much broader liability protections, requiring the dismissal of complaints against any company that shares cyber-threat information, "or in good faith fails to act based on such sharing, if such sharing is conducted in good faith" and in accordance with the statute.

To receive those broad protections, businesses must undertake specific efforts to protect privacy. In particular, they shall "take reasonable efforts to remove information that can be used to identify specific persons and is reasonably believed at the time of sharing to be unrelated to a cybersecurity risk or incident and to safeguard information that can be used to identify specific persons from unintended disclosure or unauthorized access or acquisition." The information would be submitted to a civilian agency – the Department of Homeland Security's National Cybersecurity and Communications Integration Center ("NCCIC") – to be scrubbed again for personal information before the data is shared with pertinent federal agencies. The NCPAA also requires the preparation of specific information-sharing and privacy-protection rules and procedures, and the submission of regular reports by the Privacy and Civil Liberties Oversight Board and the agencies receiving cyber-threat information. Through a late amendment, the NCPAA requires the Comptroller General, within five years, to submit a report assessing the impact of the NCCIC's work on privacy and civil liberties.

The White House has issued a Statement of Administration Policy expressing concerns about the NCPAA's expansive liability protections. To see the Statement, go here. In particular, the Administration believes that the statute "should not grant immunity to a private company for failing to act on information it receives about the security of its networks," which "would remove incentives for companies to protect their customers' personal information and may weaken cybersecurity writ large." As a result, expect major revisions to the NCPAA's liability provisions as the bills move through Congress and towards the President's desk.

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If you have any questions, or would like to discuss any data-security issue, please feel free to contact:

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