

Identity Theft and Data Security

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Warning!

- [Companies and organizations doing business in Texas have **new** duties on top of the duties you already had
- [The civil penalties can be onerous (\$25,000 per violation in some cases)
- [The public relations costs can be dear
- [The injunctive relief can be far worse!

Attack Vectors to Liability

— [Dumpster Diving

— [Shoulder Surfing

— [Direct Attack (physical or electronic)

— [Social Engineering

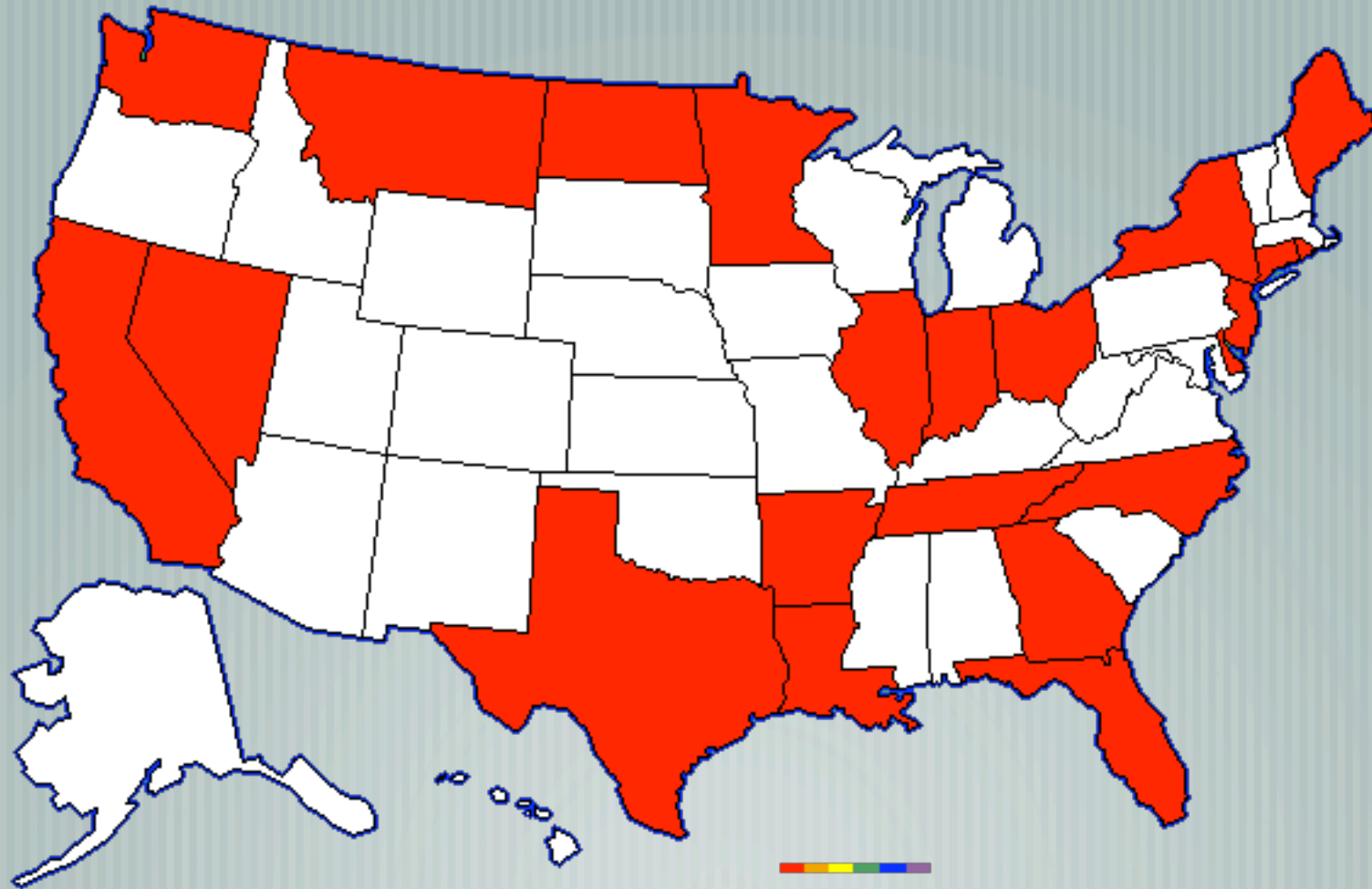
— [Infiltration

— [Phishing, Spam, Virus/Trojan/Rootkit

How have the rules changed?

- [23 states have enacted some form of data security legislation
- [Some federal legislation already in effect (e.g., HIPPA, GLBA)
- [More federal legislation is in the works
- [Matters of preemption need to be worked out if/when federal legislation is passed
- [In the meantime, state laws are enforceable!

Example: Data Breach Laws



Example: Texas

- [Currently, a hodgepodge of laws, not unlike other states...
- [Texas Business & Commerce Code:
 - 48.102 Business Duty to Protect Sensitive Personal Info.
 - 48.103 Notification Required Following Breach
 - 35.48 Retention and Disposal of Business Records
 - 35.581 [First] Privacy Policy Needed to Require SSN
 - 35.581 [Second] Merchants taking SSN or License Number

Example: Texas

— [Texas Business & Commerce Code: (continued)]

— 35.50 Protection of Biometric Data

— 35.58 Annual disclosure requirement to retain SSN

— 35.60 Warning signs in restaurants and bars

— 35.61 Business receipts containing credit/debit numbers

— 48.203 Allows DTPA claim for 48.101 violation

Example: Texas

- [Laws are not necessarily coherent. No overarching vision
 - Each provision has specific definitions
 - Who is protected
 - What is protected
 - What penalties are imposed

Federal Preemption

- [HIPPA, GLBA, FISA, and other laws may preempt the scope of certain state laws
- [However, state laws may still apply to other aspects of your business operations

Warning

— [Laws affecting certain types of data can have far reaching effects on your business operations

— Employee SSN's

— Discovery process for law firms

— Employees using Quicken/TurboTax on company machines

— Retail transactions

What to do?

- [Assess whether or not your company obtains implicating information (either accidentally or deliberately)]
- [Create/implement/maintain a security policy if you don't already have one]
- [Create/implement/maintain procedures for tracking implicating information and ensure proper disposal]

Don't Panic

- [Risks can be assessed
- [Measures can be taken to reduce risk or eliminate potential liability

Questions?

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