

# FINE GEDDIE

GOVERNMENT RELATIONS

## THE FINE GEDDIE REPORT

2018 REGULAR SESSION · WEEK THREE · JANUARY 26, 2018

The Alabama Legislature convened for the fifth and sixth legislative days of the 2018 Regular Legislative Session this week. Both houses tackled full floor agendas on both Tuesday and Thursday with a full committee schedule for each body on Wednesday. This report includes highlights of the week.

### ***ATTORNEY GENERAL'S OFFICE RELEASES PROPOSAL FOR ALABAMA DATA BREACH NOTIFICATION ACT***

On Tuesday, the Attorney General's office released a proposal for the Alabama Data Breach Notification Act, seeking feedback from interested parties. We were provided a copy of the proposal. The Attorney General has asked for feedback by this coming Monday, January 29. *If you are interested in reviewing this legislation but have not yet been able to do so, please let us know immediately. We will send you a copy and prepare to follow up with the Attorney General's office on your behalf.*

The approach reflected in the draft bill is different from the legislation filed in past legislative sessions. Below is a list of key changes from past versions of the bill, as described by the drafters, who indicate that they relied on neighboring and other business-friendly states – Florida, for one – in constructing the proposed bill.

- The definition of sensitive personally identifying information (PII) has been expanded to cover additional types of PII that had not been contemplated prior to more recent high-profile breaches (i.e., Equifax).
- In the past, legislation has required covered entities and third-party agents to implement and maintain reasonable security measures to protect against a breach of security. We thought it would be helpful to provide entities and agents with some broad parameters on what would be considered reasonable.
- Rather than require notification arbitrarily based on the number of individuals affected, notification under this bill will only be required after the entity or agent reaches a two-pronged analysis of harm—that is, 1) whether or not the sensitive information is reasonably believed to have been acquired by an unauthorized person; and 2) if so, that it is reasonably likely to cause substantial harm to the individuals.
- Rather than wholly exempting entities that are federally regulated,

the legislation states that when notice is required, these entities should notify consumers according to their federal guidance/rules and simply provide the AGO with a copy of the notice that was given.

- The burden of notification lies with the covered entity, even when a third-party agent has experienced a breach. However, the third-party agent must provide a covered entity with all information that the covered entity needs in order to comply with notice requirements.
- A violation of the notification law is a deceptive trade practice. However, it does not constitute a criminal offense, nor does it provide a private right of action under the Deceptive Trade Practices Act (DTPA). DTPA penalties can be sought when a covered entity or third-party agent knowingly engaged in a violation of the notification law. A violation can also result in liability for a separate civil penalty of up to \$50,000 per breach. Of course, the AG has full discretion over the pursuit of penalties.

### *ACTION THIS WEEK*

On Tuesday, the House considered legislation by Rep. Clouse regarding **vacancies in the United States Senate**. After Democrats and members of the Black Caucus used dilatory procedural tactics to extend debate, the House overwhelmingly passed HB17 removing the requirement that a special election be held for vacancies. Democrats dubbed the bill “Anti-Doug Jones” while proponents emphasized the cost savings of avoiding a special election.

SB149 by Sen. Scofield (R—Guntersville) **to establish an economic incentive program for rural broadband development**, was approved by the Senate Fiscal Responsibility and Economic Development Committee this week. The bill is now pending consideration by the full Senate. The proposed program would exempt private investors from taxation for 10 years, offer a sales and use tax exemption on equipment used at facilities and provide for a tax credit in the amount of 10% of the investment. The program would be administered by the Alabama Department of Economic and Community Affairs.

Legislation to establish a statewide regulatory framework for **transportation network companies** advanced this week. HB190 by Rep. Faulkner was approved unanimously with no debate by the House Commerce Committee on Wednesday. Similarly, the Senate unanimously approved the companion bill, SB143 by Sen. Singleton on Thursday. The bills have faced no known opposition at this point.

Sen. Pittman has filed legislation to establish a process for **evaluation of business arrangements** entered into by members of the legislature. The measure proposes a review process that would be administered by the Alabama Ethics

Commission. SB221 has been assigned to the Senate Constitution and Ethics Committee.

The Alabama Senate confirmed the appointments of **William Britt Sexton** and **Kenneth Vandervoort** to the **University of Alabama Board of Trustees**.

SB194 by Sen. Reed, a constitutional amendment related to the structure of the **University of Alabama Board of Trustees**, was approved by the Senate Judiciary Committee this week and is pending consideration of the full Senate. The measure would clarify that the congressional districts from which trustees are appointed will continue to reflect those as constituted on January 1, 2018 and further proposes the removal of the 70-year age cap for trustees to conform with an amendment previously approved by the Legislature and ratified by voters.

The Alabama Senate approved the Governor's appointment of Charles Murphree to the **Manufactured Housing Commission Advisory Board**.

SB29 by Sen. Holley (R—Elba) related to **public accountancy** was approved by the Senate this week and has been assigned to the House Boards, Agencies and Commissions Committee. The bill would amend the makeup of the Alabama State Board of Public Accountancy; authorize the board to classify a public accountant as retired; and shorten the time period after which the board may determine a licensee to be inactive or take disciplinary action against a licensee for failure to apply for a permit.

*The House and Senate will reconvene on Tuesday, January 30. There are 24 meeting days remaining in the 2018 Regular Session.*