

LEGISLATIVE UPDATE

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NEW JERSEY IDENTITY THEFT PROTECTION ACT

In one of his final actions as Governor, Richard Codey signed the NJ Identity Theft Prevention Act, which took effect on January 1, 2006. The ITPA seeks to safeguard sensitive and identifying personal information, such as Social Security numbers, from being wrongly intercepted and intentionally misused for such purposes as gaining access to bank and credit card accounts, opening new accounts, taking out a loan, renting an apartment, or even perpetrating other crimes.

The Identity Theft Prevention Act requires New Jersey businesses to take affirmative steps to protect the confidential and personal information of "customers," which is broadly defined to include anyone who provides personal information to a business or entity. Such a definition clearly could encompass applicants and employees who provide such information in search of, or during, employment.

Pursuant to the Act, "personal information" is defined as: 1) an individual's first name or first initial and last name linked with his or her account or credit card number in combination with a required security code permitting access to the individual's financial account; 2) one's Social Security number; or, 3) one's driver's license number. To protect such personal information, businesses are prohibited from intentionally communicating such information to another person or entity and are required to destroy, or arrange for the destruction of, any personal information the business no longer needs. Moreover, any business that compiles or maintains records containing personal information must disclose any breach of security of such records to any "customer" whose personal information was, or is reasonably believed to have been, accessed by an unauthorized person. In the event of a security breach, a business must notify the "customer" as expeditiously as possible via written or electronic notice, or through substitute notice, such as email, a posting on the business website, or notification through statewide media.

With regard to Social Security numbers, the most frequently used record-keeping number in the country, this Act prohibits any person or entity from 1) publicly displaying or communicating an individual's Social Security number (or any four or more consecutive numbers from the Social Security number); 2) printing an individual's Social Security number on materials mailed to the individual; 3) printing one's Social Security number on any card required for the individual to access the entity's products or services; 4) requiring an individual to transmit his Social Security number over the Internet unless the connection is secure or the Social Security number encrypted; or 5) requiring an individual to use his Social Security number to access an Internet website unless a password is also required to access the website. This Act, however, will not prevent a business from using a Social Security number for administrative purposes or for internal verification so long as the Social Security number is not released to unauthorized person(s) in the company.

A willful, knowing, or reckless violation of this Act is an unlawful practice that could potentially subject a business to civil remedies, fines, actual damages, attorneys' fees and costs, and injunctive relief.

With the implementation of this Act, New Jersey joins a growing number of states, including Arkansas, California, Delaware, Florida, Georgia, Illinois, Indiana, Maine, Maryland, Massachusetts, Minnesota, Montana, North Dakota, and Washington, that have recognized identity theft as a serious threat and enacted legislation to combat against the commission of this crime. As such, employers with locations in New Jersey and other states with similar protective legislation must understand what is required by the applicable laws of each state, and they must review, revise, and develop policies and procedures to insure compliance.