

## **NJ Identity Theft Law Effective January 1<sup>st</sup>**

NJ's Identity Theft law became effective January 1, 2006. This law is intended to make it more difficult for someone to steal and use personal information to fraudulently obtain credit cards, loans and other financial benefits.

The law applies to any business that obtains personal information on customers. "personal information" is defined as an individual's first and last name linked with any one of the following data elements: 1) social security number, 2) driver's license number or state ID card, 3) account number or credit or debit card number.

Any business that owns or uses personal information concerning a New Jersey resident shall notify the resident that there has been a security breach related to the data following discovery or notification of the breach. The disclosure notifications shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement. The disclosure may be delayed, however, if a law enforcement agency determines that notification will impede a criminal investigation.

Any business that maintains computerized data that includes personal information that the data collector does not own shall notify the owner or licensee of the information of any breach of the security of the system immediately following discovery.

For purposes of this bill, notice may be written or electronic. If the individual demonstrates that the cost of providing notice would exceed \$250,000, or that the affected class of subject persons to be notified exceeds 500,000, or the data collector does not have sufficient contact information, it may provide substitute notice, which must consist of all of the following: (1) e-mail notice when the data collector has an e-mail address; (2) conspicuous posting of the notice on the website page of the data collector, if the data collector maintains one; and (3) notification to major statewide media.

Any individual injured by a violation of the security breach section of the bill may institute a civil action to recover damages or injunctive relief.

This bill also requires any business that conducts business in New Jersey and any business that maintains or otherwise possesses personal information of New Jersey residents must take all reasonable measures to protect against unauthorized access to or use of that information in connection with or after its disposal. Further, the procedures used in the destruction and disposal of the personal records must be comprehensively described and classified as official policy in the writings of the business entity.

A violation of the destruction of records provisions of the bill shall be punishable by a civil penalty not to exceed \$3,000 for each violation, injunctive relief and actual damages, costs and reasonable attorney's fees.

The bill also prohibits any person, including a public or private entity from: (1) intentionally communicating or otherwise making available to the public an individual's Social Security number; (2) printing an individual's Social Security number on any card required for the individual to access products or services provided by the person; (3) requiring an individual to transmit his Social Security number over the Internet, unless the connection is secure or the Social Security number is encrypted; (4) requiring an individual to use his Social Security number to access an Internet website, unless a password or unique personal identification number or other authentication device is also required to access the Internet website; (5) printing an individual's Social Security number on any materials that are mailed to the individual, unless State or federal law requires the Social Security number to be on the

document to be mailed; (6) selling, leasing, loaning, trading, renting, or otherwise disclosing an individual's Social Security number to a third party for any purpose without written consent to the disclosure from the individual; or (7) refusing to do business with an individual because the individual will not consent to the receipt by that person of the Social Security number of that individual, unless that person is expressly required under State or federal law, in connection with doing business with an individual, to submit to the State or federal government, as applicable, that individual's Social Security number.

Unauthorized use of a Social Security number is punishable by a \$3,000 fine for a negligent violation, and a \$5,000 fine or up to 15 days imprisonment, or both, for knowingly violating this section. An aggrieved individual may recover actual damages or \$5,000, whichever is greater, plus reasonable attorney's fees and court costs.

*This analysis was prepared by NJLDA general counsel, Steven Brawer, Lowenstein Sandler. For more information on what your company will need to do to comply with this law, contact Steve at (973) 597-2412.*