

Legal Alert

September 25, 2008

Massachusetts Adopts Sweeping Rules Affecting Retention of Personal Data

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Who is Affected: Clients which Maintain Personal Data on Massachusetts Residents

Effective Date: January 1, 2009

On January 1, 2009, regulations adopted by the Massachusetts Office of Consumer Affairs and Business Regulation will go into effect. In an effort to combat identity theft, these regulations establish standards by which personal information of Massachusetts residents is maintained, including computer system security requirements as they pertain to the storing and transmission of personal information.

Those affected by these new regulations include clients who maintain personal information regarding shareholders, customers, or employees who reside in Massachusetts.

Under the regulations, every person that owns, licenses, stores, or maintains personal information about a resident of Massachusetts must develop, implement, maintain, and monitor a comprehensive, **written** information security program applicable to any records containing personal information. The security program must be reasonably consistent with industry standards and contain administrative, technical, and physical safeguards to ensure the security and confidentiality of personal information.

Whether a company's security program complies with the new regulations is subjective depending on the size, scope, and type of business; the amount of resources of the company; the amount of stored data; and the need for security and confidentiality of personal information. However, at a minimum, all

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security programs must contain certain features, including, among other things, designating one or more employees to maintain the security program, identifying internal and external risks to the security of the personal information and evaluating and improving, if necessary, the effectiveness of the safeguards limiting those risks, imposing disciplinary measures for violation of the security program, and ensuring third-party service providers with access to personal information have the capacity to protect that information.

Also, these privacy regulations require that any company that owns, licenses, stores, or maintains personal information about a Massachusetts resident and electronically stores or transmits that information must include in its security program the establishment and maintenance of a security system covering its computers, including any wireless system. These requirements include, among other things, user authentication protocols, access control measures, monitoring systems, and employing education and training.

The Attorney General of Massachusetts has the authority to enforce the laws under which these privacy regulations were adopted and may bring an action for a preliminary or permanent injunction for a violation of these regulations wherein a court may impose a civil penalty of not more than \$5,000 for each violation and may require the payment of reasonable costs of the investigation and litigation, including reasonable attorney's fees.

For more information concerning these regulations and compliance therewith, please contact Mark Worley via telephone at (717) 731-1700 or via email at worley@bybelrutledge.com.

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