



Client Alert



Contact Attorneys Regarding
This Matter:

Matthew V. Wilson
404.873.8551 - direct
404.873.8552 - fax
matthew.wilson@agg.com

Lisa Dowling
404.873.8188 - direct
404.873.8189 - fax
lisa.dowling@agg.com

Arnall Golden Gregory LLP
Attorneys at Law
171 17th Street NW
Suite 2100
Atlanta, GA 30363-1031
404.873.8500
www.agg.com

IS YOUR CUSTOMER DATA SECURE? What the New Massachusetts Data Security Regulations Mean for Your Business

The new data security regulations adopted by the State of Massachusetts, effective as of March 1, 2010, require that all businesses implement a written information security program and encrypt any personal data that is transmitted via the internet or stored on any laptops or similar portable devices. Importantly, these regulations are not limited to local businesses, but will apply to any company that owns, licenses or processes personal information concerning a resident of the State of Massachusetts. In effect, this state law has national and international implications.

Personal Information

The new regulations govern the use and protection of "personal information," which is defined as a Massachusetts resident's first and last name, or first initial and last name, in combination with any one or more of the following:

1. social security number;
2. driver's license number or state-issued identification card; or
3. financial account number, credit or debit card number, with or without any access or security code, personal identification number or password, that would permit access to an individual's financial account.

Requirements

In summary, the data regulations require companies to do the following:

1. take reasonable steps to screen, select and retain third-party service providers that employ appropriate data-security measures;
2. encrypt, as defined by the regulations, all personal information that is transmitted electronically or stored on portable devices; and
3. adopt and implement specific organizational, physical and technical data-security safeguards.

Each of these requirements is prescribed, and more thoroughly defined by, the regulations (see 201 CMR 17.00).

What This Means for You

The Massachusetts law was enacted to combat the proliferation of identity theft and state regulators have indicated that they intend to vigorously enforce the law, which will include enforcement against out-of-state businesses



Client Alert

to the extent required to protect Massachusetts residents. Accordingly, the adoption of this new law, coupled with the Nevada encryption statute adopted last year, means that all companies that conduct interstate commerce should carefully review both their internal data-collection policies and protection safeguards, and the policies and practices employed by their third-party service providers, or face potential fines and/or other pecuniary penalties upon the occurrence of a data-security breach.

Not if, but how

Arnall Golden Gregory LLP has significant experience in the area of data use and privacy. Do not hesitate to contact us if we can be of help to you.

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