NEW CALIFORNIA SECURITY BREACH NOTIFICATION REQUIREMENTS TO TAKE EFFECT JANUARY 1

California recently amended its security breach notification law with changes that will take effect on January 1, 2012. The new law impacts owners and holders of personal information belonging to California residents. In 2002, California became the first state to enact security breach notification legislation with Cal. Civ. Code §§ 1798.29 and 1798.82 (effective July 1, 2003). Since then, a total of 46 states have enacted similar legislation, often using the California law as a model. Senate Bill 24 (SB-24) amends Cal. Civ. Code §§ 1798.29 and 1798.80, mandating additional content for compulsory security breach notifications sent to California residents. In addition to new content requirements, the recent legislation requires notification of the California Attorney General in some instances.

History of California Breach Notification Law and Recent Changes

Prior to SB-24, California law required any owner or licensor of computerized data that includes personal information belonging to a California resident to notify that California resident to notify that California resident in the event that his or her personal information is, or is reasonably believed to be, acquired by an unauthorized person. Subject to very limited exceptions, any entity in possession of a California resident’s personal information that it does not own must, upon discovering a breach of the security of such personal information, notify the owner so that it may notify affected California residents. Beyond requiring that a notice be sent, the law mandated only that it be sent in writing (with limited exceptions) and expeditiously, without unreasonable delay, consistent with legitimate law enforcement needs and any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system on which the personal information resided.

SB-24 conforms California law to many of the more rigorous requirements that other states have added to the original California law model. For example, when it becomes effective on January 1, 2012, California law will require that electronic notification be sent to the California Attorney General when notification is sent to more than 500 California residents affected by the same security breach incident. Further, all notifications must include specific details, including the date or approximate date of the security breach, the date of the notification, a

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1 Senate Bill 24 is available for viewing at [http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0001-0050/sb_24_bill_20110819_enrolled.pdf](http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0001-0050/sb_24_bill_20110819_enrolled.pdf)

2 “Personal information” means an individual’s first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:
   1. Social Security number;
   2. Driver’s license number or California Identification Card number;
   3. Account number, or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual’s financial account;
   4. Any information regarding an individual’s medical history, mental or physical condition, or medical treatment or diagnosis by a healthcare professional; or
   5. An individual’s health insurance policy number or subscriber identification number, any unique identifier used by a health insurer to identify the individual, or any information in an individual’s application and claims history, including any appeals records. Cal. Civ. Code §§ 1798.29(g), 1798.82(h).

3 Cal. Civ. Code §§ 1798.29(a), 1798.82(a).
4 Cal. Civ. Code §§ 1798.29(b), 1798.82(b).
5 Cal. Civ. Code §§ 1798.29(e), 1798.82(f).
general description of the breach, what types of personal information were subject to the breach, and whether notification was delayed by law enforcement investigation. 6 Additionally, the amended California statute requires that the notification include the toll-free telephone numbers and addresses of the major credit reporting agencies if the breach exposed a Social Security number or California Identification Card number. 7 (The amended California statute also permits, but does not require, certain information that is required to be included in notices under certain other state laws. 8 )

Implications

The new legislation highlights the importance of a comprehensive information governance plan, including security incident identification and action preparation. These latest changes to the pathbreaking California law highlight the constant and continuing changes to the law in this area and illustrate several compliance obligations arising under the multitude of state laws that may apply to any given data breach incident. While efforts to enact a single comprehensive federal breach notification statute are ongoing, no such law has been passed. 9

Wilson Sonsini Goodrich & Rosati attorneys regularly assist clients with all aspects of their privacy and information governance needs, including incident response, remediation, and avoidance. For additional information about the new California legislation or any related questions, please contact Lydia Parnes at (202) 973-8801, Seth Silber at (202) 973-8824, Gerry Stegmaier at (202) 973-8809, Matthew Staples at (206) 883-2583, or Wendy Devine at (858) 350-2321.

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6 The amended California statute specifies that notices may, at the discretion of the agency, person, or business making the notification, include information about what the agency, person, or business has done to protect individuals whose information has been breached, and advice on steps that the person whose information has been breached may take to protect himself or herself. Cal. Civ. Code §§ 1798.29(b)(3), 1798.82(d)(3). This information is required to be included under certain other state data breach notification laws. See, e.g., N.C. Gen. Stat. § 75-65.


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See Pfizer v. Apotex, 480 F.3d 1348 (Fed. Cir. 2007).

Id. at 1361-2.