

Morrison & Foerster Client Alert

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MoFo Privacy Minute

Nevada Expands Definition of PI for Purposes of the State's Breach and Safeguards Laws

By Nathan Taylor

Nevada's recently amended law will, among other things, create the first state mandate to encrypt online account credentials. Specifically, on May 13, 2015, Nevada Governor Sandoval approved a bill ("AB 179") to expand the definition of "personal information" for purposes of the state's security breach notification and personal information safeguards laws. In so doing, Nevada became the fifth state this year to amend (*i.e.*, expand) the scope and obligations of its state breach law. Montana, North Dakota, Washington and Wyoming have also expanded their respective breach laws this year. Other states, such as California and Illinois, continue consideration of significant amendments to their respective breach laws.

Effective July 1, 2015, AB 179 will expand the definition of "personal information" for purposes of the Nevada breach and safeguards laws to include an individual's first name or initial and last name in combination with the following new data elements:

- (1) driver authorization card number;
- (2) medical identification number or health insurance identification number; or
- (3) user name, unique identifier or e-mail address in combination with a password, access code or security question and answer that would permit access to an online account.

IMPACT

The big news in this amendment is the impact this will have on the data security safeguards required for companies that handle personal information relating to Nevada residents. While several states have recently expanded their breach laws to cover online account credentials (see California, Florida and Wyoming), the same cannot be said for state safeguards laws. The Nevada amendment is significant because the state's encryption requirements will now apply to these

UNITED STATES

California

Tiffany Cheung	(415) 268-6848
Kimberly R. Gosling	(858) 314-5478
Rebekah Kaufman	(415) 268-6148
Christine E. Lyon	(650) 813-5770
David F. McDowell	(213) 892-5383
Purvi G. Patel	(213) 892-5296
Andrew Serwin	(858) 720-5134
Stephanie Sharron	(650) 813-4018
William L. Stern	(415) 268-7637
Nancy R. Thomas	(213) 892-5561
David M. Walsh	(213) 892-5262

New York

Cindy Abramson	(212) 336-4178
Melissa Crespo	(212) 336-4354
John F. Delaney	(212) 468-8040
Michael B. Miller	(212) 468-8009
Sotirios Petrovas	(212) 336-4377
Suhna N. Pierce	(212) 336-4150
Marian Waldmann Agarwal	(212) 336-4230
Miriam H. Wugmeister	(212) 506-7213

Washington, D.C.

Patrick Bernhardt	(202) 887-8771
L. Richard Fischer	(202) 887-1566
Adam J. Fleisher	(202) 887-8781
Libby J. Greismann	(202) 778-1607
Julie O'Neill	(202) 887-8764
Cynthia J. Rich	(202) 778-1652
Nathan David Taylor	(202) 778-1644

EUROPE

Berlin

Hanno Timmer	49 30 72622-1346
Lokke Moerel	44 20 79204054
Alex van der Wolk	44 20 79204054

Brussels

Karin Retzer	32 2 340 7364
Alja Poler De Zwart	32 2 340 7360

London

Susan McLean	44 20 79204045
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ASIA

Beijing

Paul D. McKenzie	86 10 5909 3366
------------------	-----------------

Hong Kong

Gordon A. Milner	852 2585 0808
------------------	---------------

Singapore

Daniel P. Levison	65 6922 2041
-------------------	--------------

Tokyo

Toshihiro So	81 3 3214 6568
Yukihiro Terazawa	81 3 3214 6585

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new data elements. What that means is that companies will *not* be able to do the following with respect to online account credentials (and other “personal information” for purposes of the Nevada law, including the additional data elements added by AB 179):

- (1) transfer “personal information” through an electronic, non-voice transmission (other than a fax) to a person outside of the company’s secure system unless the transmission is encrypted in accordance with certain standards; or
- (2) move a “data storage device” containing “personal information” beyond the logical or physical controls of the company or its data storage contractor unless the information is encrypted.

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