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Effective Date of Nevada Encryption Law Rapidly Approaching

As of October 1, 2008, Nevada law will require businesses in the state to encrypt customer personal information if those data are transmitted electronically outside the business's "secure system," other than via facsimile.

Scope and Application of the Law

The Nevada statute prohibits "businesses in the state" from transferring "any personal information of a customer through an electronic transmission other than a facsimile to a person outside of the secure system of the business unless the business uses encryption to ensure the security of electronic transmission." With respect to this requirement, the Nevada law defines only the terms "personal information" and "encryption," but does not define other pivotal terms such as "businesses in the state," "customer," "electronic transmission," or "outside the secure system of the business." For purposes of this law, "personal information" means a person's first name or first initial and last name in combination with one or more of the following identifiers: (1) a Social Security number ("SSN"); (2) a driver's license number or identification card number; or (3)

an account number or a credit or debit card number combined with any required security, access code or password that would permit access to the person's financial account. The last four digits of an SSN or "publicly available information that was lawfully made public" are expressly excluded from the definition of "personal information."

In the absence of clear guidance on the law's applicability to "businesses in the state" and their "customer" data, companies should carefully assess all electronic transmissions, other than those that are purely internal or accomplished via facsimile, that include non-employee personal information to consider whether encryption technology should be applied. Nevada caselaw indicates that the question of whether a company is "doing business" in a state is often a fact-specific inquiry that must be undertaken on a case-by-case basis.

Required Encryption Technology

The Nevada law defines encryption as "the use of any protective or disruptive measure, including, without limitation, cryptography, enciphering, encoding or a computer containment, to: (1) [p]revent, impede, delay or disrupt access to any

data, information, image, program, signal or sound; (2) [c]ause or make any data, information, image, program, signal or sound unintelligible or unusable; or (3) [p]revent, impede, delay or disrupt the normal operation or use of any component, device, equipment, system or network.” As such, the statute does not mandate any specific type of encryption technology.

We Can Help

Several states now require businesses to implement information security measures, though Nevada is the first to specifically mandate encryption as a technical safeguard. Hunton & Williams’ Privacy and Information Management practice assists clients in developing, implementing and evaluating privacy

and information security programs to comply with federal and state requirements. If you would like assistance in reviewing your organization’s privacy or data security practices, or developing new policies or training programs, please contact us.

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