

## **New York's Disposal of Personal Records Law Amended**

by **Jonathan Trafimow**

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On September 5, 2008, New York Governor David A. Paterson signed into law Bill No. A10625, which amends New York's General Business Law §399-h. Effective immediately, the amendment clarifies who must abide by New York's Disposal of Personal Records Law, which relates to the disposal of records containing personal identifying information.

### **What is Personal Identifying Information?**

Personal identifying information consists of personal information, such as a name, number, personal mark or other identifier, which can be used to identify a natural person, coupled with one or more data elements. Data elements range in type and are enumerated in the statute. Covered entities should evaluate the new law with respect to social security numbers, driver's license or identification card numbers, mother's maiden name, financial services account codes, savings account codes, checking account numbers, debit card numbers, automated teller machine numbers, electronic serial numbers, or personal identification numbers. Personal identification numbers refer to any number or code which may be used alone or in conjunction with another piece of information to assume the identity of another person, access financial resources, or obtain credit information.

### **Who Must Now Comply?**

New York's Disposal of Personal Records Law requires entities that gather personal information from any source to take appropriate measures when disposing of such critical information. Previously, the law required a business, firm, partnership, association, corporation, or business person to dispose of records containing personal identifying information after (a) shredding the record; (b) destroying the personal identifying information contained in the record; (c) modifying the record to make the personal identifying information unreadable; or (d) taking reasonable actions consistent with commonly accepted industry practice. Intending to protect consumers from identity theft, the amended law now asserts that all corporations and

associations, including not-for-profit corporations and non-profit organizations, are equally responsible for protecting consumer identity. By removing the term “business person” and adding “not-for-profit corporations and non-profit organizations,” the law clarifies that an entity will be required to comply with §399-h whether or not it is conducting a business for profit. The law does exempt entities that are only disposing of their own records, but still applies to individuals who, for example, prepare taxes for others, but do not work for a large tax firm.

### **What are the Penalties for Violators?**

Penalties for violating N.Y. Gen. Bus. Law §399-h remain stringent. Upon a claimed violation, the alleged victim must file a report with the Attorney General, who may then issue an injunction to enjoin and restrain the violators and/or impose stiff fines, up to \$5,000. Those accused of violating the law are afforded an affirmative defense if they used due diligence when attempting to dispose of the records properly.

### **What Does This Mean for New York Employers?**

With identity theft on the rise and state and federal governments enforcing stricter legislation, employers subject to New York’s Disposal of Personal Records Law should review the new records disposal guideline and ensure compliance.

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