

July 2005

**THE YEAR OF THE DATA BREACH**

2005 will probably go down in history as the “Data Breach Year” which may lead to 2006 being the “Privacy Protection Year.” On the heels of story after story about companies losing their customers’ or employees’ personal information via hackers or other lapses in security measures, the federal and state governments are taking a close look at how they can increase the regulation of personal and financial information. Currently, regulations are being drafted to hold companies more accountable for failing to secure the data they collect and store about their employees and customers.

As is typical in the area of consumer protection, the regulatory charge is being led on the state level. A state-by-state regulatory structure has emerged since 2003, when California passed one of the first laws requiring notification of data theft or loss. Since 2003, 17 states have since enacted similar laws, including Arkansas, Georgia, Montana, North Dakota and Washington. Ohio has not yet enacted a law.

Congress has been active in this area as well. Under one of several recent Congressional proposals, companies that experience loss or theft of data on more than 1,000 people would be required to notify the affected persons or face fines of up to \$11 million per incident. Additionally, the bill would bar businesses, schools and companies from using Social Security numbers on identification cards and other forms of identification. S.B. 1408, 109<sup>th</sup> Cong. (2005). Under, Senate Bill 1408, one of several recent Congressional bi-partisan proposals, companies that experience loss or theft of data on more than 1,000 people would be required to notify the affected persons or face fines of up to \$11 million per incident.

Whether it is state or federal legislation, businesses that collect and maintain personal information can be assured that in the near future a government entity will be placing greater security and privacy requirements on procedures associated with the collection and storage of personal information. State and federal regulations in this area generally share three common points. They require companies to:

- notify consumers nationwide if certain types of breaches occur
- set minimum standards for security
- impose stiff civil and/or criminal penalties for violation

In the meantime, protect your company by reviewing your privacy policies and ensure you have adequate security procedures in place. For more information on appropriate policies and procedures go to: [www.keglerbrown.com](http://www.keglerbrown.com)