



Electronic Dispatch

# Business Law Information Memo

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## DISPOSAL OF PERSONAL RECORDS LAW

As part of New York State's efforts to fight identity theft, Governor Pataki has signed the "Disposal of Personal Records Law" which is effective December 6, 2006. This anti-identity theft measure requires businesses to properly dispose of records containing individuals' personal identifying information.

In order to ensure that unauthorized persons are unable to access individuals' personal identifying information, the law requires one of the following methods prior to disposing of records containing personal identifying information:

- (1) shredding the record prior to its disposal;
- (2) destroying the personal identifying information contained in the record;
- (3) modifying the record to make the personal identifying information unreadable; or
- (4) taking action consistent with commonly accepted industry practices that the company reasonably believes will ensure that no unauthorized person will have access to the personal identifying information contained in the record.

Under the new law, personal identifying information is defined as any personal information (that concerning a natural person which, because of name, number, personal mark, or other identifier, can be used to identify that natural person) in combination with any one or more of the following data: (a) social security number; (b) driver's license number or non-driver identification card number; or (c) mother's maiden name, financial services account number or code, savings account number or code, checking account number or code, debit card number or code, automated teller machine number or code, electronic serial number or personal identification number.

Notably, the new law does not affect current record retention requirements imposed upon businesses under various state and federal laws, including Sarbanes-Oxley Act Sections 802 and 1102 and prohibitions against spoliation of evidence.

As part of their record retention policies and practices, businesses should develop and implement company-wide policies concerning the disposal of records containing personal identifying information. A practical solution may be to shred all paper documents containing personal information prior to disposal. For electronic records, businesses should be even more careful because simply deleting an electronic record may not be sufficient to ensure that unauthorized persons are unable to access it. Accordingly, businesses should seek advice from information technology specialists in devising disposal methods for electronic records. Looking forward, companies can limit potential liability under the new law by refraining from using a person's social security number, mother's maiden name, etc. on any document where such information is not needed.

If you have any questions about the new Disposal of Personal Records Law or wish to discuss your record retention policies and practices, please contact your BS&K attorney or one of the attorneys listed below.

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