



New Oregon Identity Theft Protection and Non Competition Laws

Martin Medeiros
Partner

SWIDER MEDEIROS HAVER LLP
mmedeiros@smhllaw.com
503-226-8122



Introduction

- Intangibles
- Protecting identities
 - Oregon Department of Consumer and Business Services
 - SSN
 - Three notice issues
 - Five data protection action items
 - Security plan action items
 - Penalties
- Non-competition and trade secrets

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Protecting SSNs

- If you maintain Social Security Numbers
 - No disclosure on mailed / displayed cards or documents
 - UNLESS customer requests

SSN on Records

- Exceptions: Records
 - Legally required to be public (certain records)
 - Used for internal verification or administrative processes (payroll)
 - Used to enforce a judgment or court order (garnishment)
 - Required by court rules (benefits claims)
 - Copied and possessed by court, state court administrator, or secretary of state

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Protecting “Personal Information”

- “Personal Information” defined
 - Customers name + social security number
 - Oregon driver’s license / Oregon ID card number
 - Financial, credit, debit card + security code or password that allows access

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Notice of Breach

- If you maintain or possess “personal information”
 - Notify as soon as possible:
 - By written notification
 - Electronic notification, if this is customary; or
 - Telephone if you can contact the affected directly
- If obligated to maintain or possess “personal information”
 - Notify owner or licensee

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Notice 2: Exceptions

- May be delayed if:
 - Interferes with law enforcement
 - Investigation of breach determines no reasonable likelihood to harm; or
 - Personal information is encrypted or made unreadable – notification not required
- Gramm-Leach-Bliley Act / HIPPA compliant meet Oregon's notice standard (e.g., banks, hospitals) for *consumers*
 - but not necessarily for **employees**

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Notice 3: Substitute

- If you demonstrate:
 - Cost > \$250,000
 - Affected > 350,000 persons; or
 - No means to sufficiently contact customers
- You may give substitute notice:
 - Posting of notice or link on website; and
 - Notifying major statewide Oregon television and newspaper media

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Data Protection

- Develop, implement, and maintain reasonable safeguards to ensure information:
 - Security
 - Confidentiality
 - Integrity
- Includes document destruction
- Must follow various record retention laws

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Data Protection: Action Items

1. Investigate and inventory

- Information flows: online, thumb drives, mobile phones, PDAs
- “work from home” employee policies
- Contractor policies

2. Assess

- Effectiveness study of safeguards to see:
 - Internal risks
 - External risks

Data Protection: Action Items

3. Protect

- Paper documents with personal information
- CDs, floppy disks, zip / tape drives
- Disaster recovery sites / backups
 - Use physical locks appropriate to industry
- Encrypt laptop information
- Firewall network

4. Eliminate

- Need to keep basis
- Legitimate business need
- Draft and follow records retention plan

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Data Protection: Action Item

5. Train employees on:
 - “personal information”
 - Notification procedures

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Security Breach Detection: Action Item

- Test and monitor security
 - Controls
 - Systems
 - Procedures
 - Physical safeguards
 - Electronic safeguards

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Action Item: Records Destruction:

- Comply with records retention on state, local and federal laws
 - Destroy when no longer needed
 - Physical – shred, burn, pulverize
 - Electronic – overwritten, there must be no possible way to reconstruct.
- Recycle technology properly
 - Not recycler's responsibility

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Action Item: Administrative Safeguards

- Create a Security Program
 - Appoint security program coordinator
 - Identify external / internal risks
 - Test safeguards
 - Train and manage employees
 - Select service providers / vendors who can help and contractually comply
 - Adapt to new business and threats

Small Business

- < 200 Manufacturing employees
- <50 or fewer in other types of business
 - Complaint if :
 - Administrative
 - Technical
 - Physical safeguards
- Appropriate to:
 - the business' size and complexity
 - nature, scope of its activities, and
 - the sensitivity of the personal information it collects.



Enforcement & Penalties

- Investigate alleged violators
- Require or permit sworn evidence
- Order compensation to consumers if private civil action burdensome
- \$1,000 for every violation
- Every violation is a separate offense and, in the case of a continuing violation, each day's continuance is a separate violation
- Maximum penalty for any occurrence is \$500,000.

Trade
Secret

New Non-Competition Law

- “Protectable Interest”
- Trade Secret Defined
- Non-Solicitation Agreement
 - not part of non-com law
- Two Weeks Advance Notice / Two Year Limit
- > \$62,000

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Review

- Affirmative duties to privacy liability
 - Protecting Social Security Numbers
 - Data Protection
 - Create a security plan
 - \$1,000 / \$250,000, 350,000
- Incorporate new non-compete law into hiring practices
 - 2 weeks / 2 years / \$62,000

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*Swider Medeiros Haver LLP
1420 American Bank Building
621 SW Morrison Street
Portland, Oregon 97205
(503) 226-8122
www.smhllaw.com
info@smhllaw.com*