

# Client Alert.

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## California Governor Vetoes Enhanced Security Breach Notification Bill

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On September 29, 2010, Governor Schwarzenegger vetoed California Senate Bill 1166 ("SB 1166"), which would have expanded the state's current security breach notification law.<sup>1</sup> SB 1166 sought to regulate the content of security breach notices, and also would have required any person or business affected by a large-scale breach to notify the state Attorney General.

California's security breach notification law, the first of its kind to be approved by a state legislature, went into effect on July 1, 2003.<sup>2</sup> It requires any person or entity that conducts business in California, and that owns or licenses computerized data which includes "personal information," to notify California residents whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person through a security breach.<sup>3</sup> In its current form, the state law does not require covered businesses or persons to communicate any particular information about the breach to consumers.

Since 2003, 45 other states, as well as the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, also have enacted security breach notification laws. In general, these state security breach notification laws are understood to be modeled upon the California law. Many states, however, have built upon California's model and added more detailed requirements. For example, at least 15 states and Puerto Rico require security breach notices to include certain types of information for consumers.<sup>4</sup> Likewise, at least 15 states and Puerto Rico require an entity that suffers a security breach to notify a state regulator, such as the Attorney General, as well as the affected individuals.<sup>5</sup> With SB 1166, California would have added similar requirements to its own breach notification law.

SB 1166 was a reintroduction of Senate Bill 20 ("SB 20"), which the Governor vetoed on October 11, 2009. Specifically, SB 1166 would have amended the California law to require that security breach notices "be written in plain language." In addition, a business would have been required to include in its notice, at a minimum, a list of the categories of "personal

<sup>1</sup> The text and legislative history of SB 1166 are available at <http://www.leginfo.ca.gov/>.

<sup>2</sup> Cal. Civ. Code § 1798.82. A similar breach notification law applies to California state agencies. *See* Cal. Civ. Code § 1798.29.

<sup>3</sup> Cal. Civ. Code § 1798.82(a). Any person or entity that maintains computerized data that includes "personal information" that the person or entity does not own must notify the owner or licensee of that information about any such incident. Cal. Civ. Code § 1798.82(b). "Personal information" is defined as an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted: (1) Social Security number; (2) driver's license number or California identification card number; (3) account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account; (4) medical information; or (5) health insurance information. Cal. Civ. Code § 1798.82(e).

<sup>4</sup> These states include Hawaii, Iowa, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New York, North Carolina, Oregon, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

<sup>5</sup> These states include Alaska, Hawaii, Indiana, Louisiana, Maine, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, New York, North Carolina, South Carolina, Vermont, and Virginia.

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information” affected by the breach, the actual or estimated date of the breach (if known), the nature of the breach, contact information for the person or entity reporting the breach, contact information for the major credit reporting agencies, and an indication of whether the notice was delayed as a result of a law enforcement investigation.

Additionally, SB 1166 would have required notification to the California Attorney General of any breach that resulted in notice to more than 500 California residents.

In vetoing SB 1166, the Governor explained once again that the additional restrictions of SB 1166 were “unnecessary” because “there is no evidence that there is a problem with the information provided to consumers” under California’s existing data breach laws. He further noted that “there is no additional consumer benefit gained by requiring the Attorney General to become a repository of breach notices when this measure does not require the Attorney General to do anything with the notices.”<sup>6</sup> The Governor vetoed SB 20 for the same reasons.<sup>7</sup>

Despite the Governor’s veto of SB 1166, California businesses should be mindful that consumers residing in other states may be covered by laws that require notice to state authorities in the event of a security breach, or that impose particular content requirements for security breach notices. Additional information, including links to the state breach notification laws, is available through Morrison & Foerster’s free online privacy library at [www.mofoprivacy.com](http://www.mofoprivacy.com).

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<sup>6</sup> The Governor’s veto message is available at <http://www.gov.ca.gov/press-release/16089/>.

<sup>7</sup> See [http://gov.ca.gov/pdf/press/2009bills/SB20\\_Simitian\\_Veto\\_Message.pdf](http://gov.ca.gov/pdf/press/2009bills/SB20_Simitian_Veto_Message.pdf).