

Legal Alert: New Law Imposes Duties On *All Businesses* as to Disposal Of Consumer Information

Thanks to the ever-growing problem of identity theft, businesses now have increased duties with respect to the disposal of “consumer information.” On December 4, 2003, the Fair and Accurate Credit Transaction Act (“FACTA”) became law. The law requires that any person that maintains or otherwise possesses consumer information for a business purpose, properly dispose of any such information. Before the law took practical effect, the Federal Trade Commission (FTC) had to enact rules implementing the law. This past July the FTC’s implementing rules went into effect.

Note the following key points about the law.

- The law only applies *when* a business disposes of consumer information. The law does not require businesses to maintain or to dispose of such information.
- The law applies to all businesses regardless of size. Lending institutions are clearly the primary target of the new law. Also significantly affected will be mortgage brokers, automobile dealers, landlords, insurers and waste disposal companies. The FTC’s rule making commentary indicates that *every employer* is subject to the law.
- “Consumer information” is any information that is, or derived from, a consumer report (i.e., any personal information obtained to evaluate credit or insurance worthiness). Such information may include credit reports or employee background reports. If the information in your business’ files is derived from consumer information, your business is subject to FACTA’s disposal requirements.
- Information that does not identify individuals (such as aggregate information and blind data) is not deemed “consumer information.”
- No specific disposal methods are specified. Instead, the rule requires “reasonable measures to protect against unauthorized access to or use of the information.” For large companies, this will no doubt require the establishment of formal disposal policies and procedures, as well appropriate employee training.
- In the case of computer embedded information, the FTC says that smashing or wiping the computer hard drive will be required. (Perhaps the FTC should have talked to OSHA or the EPA before recommending smashing hard drives. Computer circuitry is notorious for its toxic content.) Conceivably, the same destruction rules would apply to information contained on such media as magnetic disk and cd-rom. In the case of documentary information, such materials will need to be burned, shredded or otherwise destroyed.
- “Disposing” or “disposal” is defined as the discarding or abandonment of consumer information. “Disposal” also means the “sale, donation, or transfer of any

medium, including computer equipment, upon which consumer information is stored.” Accordingly, any business seeking to donate computer equipment needs to abide the new law.

- If you use a disposal service to dispose of consumer information, the disposal service will *also* be subject to the law’s requirements. Additionally, you will need to ensure the disposal service is using reasonable disposal measures.
- Thankfully, the new law does not impose any specific reporting, recordkeeping or disclosure requirements.

Failing to abide FACTA’s disposal requirements can be costly. A business that violates FACTA’s disposal requirements can be held liable for *any* actual damages suffered by anyone whose identity was stolen as a result of that violation. In addition, FACTA specifically allows for class action lawsuits.

To learn more about FACTA, contact Don V. Kelly, Gallop, Johnson & Neuman, LC, 101 South Hanley, Suite 1700, St. Louis, MO 63105.

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