The Ins and Outs of the Missouri Data Breach Notification Law

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The Problem

- Information security breaches can have harmful impacts on victims:
  - Identity theft
  - Loss of money in debit accounts
  - Unauthorized charges on credit accounts
  - Large legal fees to remediate
  - Fear

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The Solution

- Missouri's Data Breach Notification Law.
  - House Bill 62, effective August 28, 2009
  - Missouri 45th State to Adopt

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Who must comply?

- Group 1 – "Any person that *owns or licenses personal information* of residents of Missouri"
  - "Owns or licenses" includes personal information that a business retains as part of the internal customer account of the business or for the purpose of using the information in transactions with the person to whom the information relates.

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Who must comply?

- Group 2 – "Any person that *maintains or possesses records or data* containing *personal information* of residents of Missouri that the person does not own or license"

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Personal Information Is . . .

- "Personal information":
  - an individual's first name or first initial and last name; and
    - Social Security number;
    - Driver's license number or other unique identification number;
    - Financial account information;
    - Unique electronic identifier;
    - **Medical information; or**
    - **Health Insurance information.**

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What is the trigger?

- 2 elements:
  - Breach of security; and
  - Discovery or notice of the breach

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What is the trigger?

- "Breach of security" or "breach" means:
  - Unauthorized access to and
  - Unauthorized acquisition of
  - Personal information
  - Maintained in computerized form
  - By a person that compromises the security, confidentiality, or integrity of the personal information.
- Good faith acquisition . . .

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What is the trigger

- "Discovery or notice of the breach"
  - Undefined in the statute
  - To be safe, look into notification requirements as soon as something appears to be a possible breach.

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What must be done?

- First, "provide notice to the affected consumer"
- Situations when notice is not required or may be delayed:
  - Not required when . . .
  - May be delayed . . .

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What must be done?

- The notification shall be:
  - Made without unreasonable delay;
  - Consistent with the legitimate needs of law enforcement; and
  - Consistent with any measures necessary to determine sufficient contact information and to determine the scope of the breach and restore the reasonable integrity, security, and confidentiality of the data system.

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What must be done?

- Notice to consumer must describe:
  - The incident
  - The type of personal information that was obtained;
  - A telephone number that the affected consumer may call for further information and assistance;
  - Contact information for consumer reporting agencies; and
  - Advice.

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What must be done?

- Allowable methods for notice to consumer:
  - Written notice;
  - Electronic notice (with restrictions);
  - Telephonic notice; or
  - Substitute notice.

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What must be done?

- Second, "notify, without unreasonable delay, the attorney general's office and [certain] consumer reporting agencies"

  ONLY IF YOU

  "provide notice to more than one thousand consumers at one time"

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What must be done?

- Different notice protocol is sufficient if:
  - A person complies with "its own notice procedures as part of an information security policy for the treatment of personal information, and whose procedures are otherwise consistent with the timing requirements of [the statute]."
  - A person complies with "procedures for a breach of the security of the system pursuant to the laws, rules, regulations, guidances, or guidelines established by its primary or functional state or federal regulator."

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What happens to violators?

- When someone doesn't comply with the Missouri Data Breach Notification Law:
  - The attorney general may sue for (1) actual damages and (2) civil penalties not to exceed $150,000 per breach of security
  - No private right of action

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How Can We Be Proactive?

- **In reviewing data security programs, your company should consider how the internet is used at your company, how data is stored and how third parties may gain access to your systems. You should consider:**
- Establishing a central executive or management employee to serve as a plan coordinator;
- Identifying reasonably foreseeable internal and external risks to security, including electronic access points and physical (i.e. paper) access points;

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How Can We Be Proactive?

You should also consider:

- Addressing any red flag rules which may apply to your company (and adjust the plan accordingly); and
- Ensuring safeguards extend to your employees and contractors.

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What Other Laws May Apply?

- HITECH
  - Effective February 2010
  - Patient/client health information
- HIPAA

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HYPOTHETICALS

QUESTIONS ???

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