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CALIFORNIA'S NEW LAW RESTRICTING THE USE OF SOCIAL SECURITY NUMBERS

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A recent addition to the California Civil Code, Section 1798.85, made by Senate Bill 168 seeks to protect consumers from identity theft by restricting the use of Social Security numbers. By its terms, the law applies to all persons and entities other than state or local agencies.

Prohibited Uses of a SS Number In general, SB 168 prohibits (1) public posting or displaying of Social Security numbers, (2) printing Social Security numbers on identification cards for services, (3) requiring a person to transmit his or her Social Security number over the internet unless the connection is secure or the Social Security number encrypted, (4) requiring a person to enter his or her Social Security number to log onto an internet site unless used in combination with a password or PIN, and (5) printing Social Security numbers on materials (other than on applications or forms) mailed to a person unless required by law.

Permitted Uses of a SS Number SB 168 does *not* prohibit using a Social Security number for internal verification, for administrative purposes, or as required by state or federal law. In addition, SB 168 also provides a grandfather clause with respect to individuals whose Social Security numbers were being used prior to July 1, 2002, however such individuals must be notified annually of their right to stop the use of their Social Security numbers through a written request.

Penalties SB 168 does not provide any penalties or enforcement rights if a person or entity fails to comply with its provisions. Nonetheless, SB 168 could arguably be enforced through the Unfair Competition Act (Business and Professions Code sections 17200 et seq.) which provides certain remedies for unlawful business practices.

Preemption by ERISA There is the argument that ERISA preempts SB 168 from being applied to ERISA-governed plans. How such an argument would fare in court is uncertain; in recent years the courts have been somewhat inconsistent in applying the ERISA preemption clause.

General Effective Date The law becomes applicable to most persons or entities beginning on July 1, 2002.

Delayed Effective Date for Certain Health Care Entities For health care service plans (i.e., HMOs), providers of health care, insurers, pharmacy benefits manager and contractors as defined in the Knox-Keene Act, the applicable effective date may be anytime from January 1, 2003 to July 1, 2005 depending upon who is the policyholder and the policy's date of issuance. Also, a health care entity will be deemed to comply with SB 168 if such entity complies with any national unique patient identifier program developed by the U.S. Department of Health and Human Services. In addition, for good cause, health care service plans and insurers may obtain a six month extension for compliance from the Department of Managed Health Care or the Insurance Commissioner. Such an extension will also apply to the affected providers, pharmacy benefits manager and contractors.

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