

Employers Association of New Jersey

A nonprofit association serving employers since 1916

David Szuchman, Director
N.J. Division of Consumer Affairs
124 Halsey Street
P.O. Box 45027
Newark, New Jersey

January 12, 2009

Re: Comments to Pre-Proposed New Rules: N.J.A.C. 13:45F-1.1, 1.2, 1.3 and 5.2.

Dear Director Szuchman:

On or about December 22, 2008, the N.J. Division of Consumer Affairs (Division) published for public comment a Pre-Proposed new rules implementing New Jersey's Identity Theft Prevention Act (the "Act"), which was passed in 2007. Please accept these comments on behalf of the employers Association of New Jersey (EANJ).

EANJ's central objection to the Division's proposal concerns the definition of "customer," which encompasses "an employee" of a business. EANJ believes that this feature of the definition exceeds the Division's statutory authority for the following reasons.

Among the Legislature's key findings in passing the Act was the lack of uniform reporting requirements for security breaches and effective fraud alerts by consumer reporting agencies. In particular, the Legislature was concerned about the disclosure of social security numbers and other personal information by entities transacting business within the state, specifically financial institutions and other merchants.

To effectuate the Act's purpose, "consumers" were guaranteed certain rights in connection with personal information contained in "consumer reports" issued by a "consumer credit agency." While the Act defines "consumer" broadly as "an individual," a "credit reporting agency" is defined as "any person which, for monetary fees ... regularly engages ... in the practice of assembling or evaluating consumer credit information on consumers for the purposes of furnishing consumer reports to third parties. Clearly, therefore, the Legislature did not include an employer-employee relationship to be covered by the Act.

Regarding sections C. 56:8-161-166, which amend and supplement the Act, a “business” is required to take substantial precautions concerning the publication of social security numbers, drivers’ license numbers and dissociated data that may provide personally identifiable information. Again, the legislative purpose under these supplementary sections is to protect a “customer,” which is defined as “an individual who provides personal information to a business.” Any fair reading of this definition within the proper legislative context demonstrates that the Legislature did not intend to extend the Act to cover the exchange of information between employers and employees. These exchanges are clearly not within the scope of the commercial transactions covered by the Act. To find otherwise would impose an excessive burden on routine employer-employee interactions, considering the substantial requirements of developing the extensive policies and practices the Division proposes.

Accordingly, EANJ respectfully requests a definition of “customer” consistent with these comments.

Respectfully submitted,
Employers Association of New Jersey

By: _____
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President