Volume 1

CHAPTER 1. INTRODUCTION

§ 1:1	The rise of information security and privacy
§ 1:2	General privacy principles
§ 1:3	Fair Information Practices—Origins
§ 1:4	Organisation for Economic Co-operation and Development guidelines
§ 1:5	—Scope of guidelines
§ 1:6	—Basic principles of national application—Collection limitation principle
§ 1:7	— —Data quality principle
§ 1:8	——Purpose specification principle
§ 1:9	— —Use limitation principle
§ 1:10	——Security safeguards principle
§ 1:11	— — Openness principle
§ 1:12	— —Individual participation principle
§ 1:13	
§ 1:14	—Basic principles of international application—Free flow and legitimate restrictions
§ 1:15	—National implementation
§ 1:16	—International co-operation and interoperability
§ 1:17	Principles adopted by the Asia-Pacific Economic Cooperation
§ 1:18	APEC information privacy principles—Preventing harm
§ 1:19	—Notice
§ 1:20	—Collection limitation
§ 1:21	—Uses of personal information
§ 1:22	—Choice
§ 1:23	—Integrity of personal information
§ 1:24	—Security safeguards
§ 1:25	—Access and correction
§ 1:26	—Accountability
§ 1:27	The FTC's formulation of FIPs
§ 1:28	Privacy and security—The seven U.S. Safe Harbor privacy principles

CHAPTER 2. INTERNET AND SOCIAL MEDIA PRIVACY

I. OVERVIEW

§ 2:1	Introduction to Internet privacy
§ 2:2	Role of FTC in privacy and security enforcement
§ 2:3	Analyzing Internet service provider's obligations
§ 2:4	Reporting requirements of an ECS or RCS
§ 2:5	Forwarding of report
§ 2:6	Permitted disclosures by the National Center for Missing and Exploited Children
§ 2:7	Limited liability for electronic communication service providers, remote computing service providers, or domain name registrar
§ 2:8	Use to combat child pornography of technical elements relating to images reported to the CyberTipline
§ 2:9	Use by electronic communication service providers and remote computing service providers
§ 2:10	Posting of information on social networking sites operating as a waiver of privacy
§ 2:11	Logging of Internet Protocol addresses
§ 2:12	Internet gambling
$\S 2:13$	—Defining prohibited conduct
$\S~2:14$	—Preemption of other laws
§ 2:15	—Use of financial instruments for unlawful Internet gambling
§ 2:16	—Regulations on payment systems
$\S 2:17$	—Civil remedies
§ 2:18	—Limitations regarding interactive computer services
$\S 2:19$	—Criminal penalties
$\S 2:20$	—Circumventions
§ 2:21	Right to be forgotten—United States
§ 2:22	Digital Millennium Copyright Act and privacy
§ 2:23	Bankruptcy Reform Act of 2005—Privacy Issues
§ 2:24	—Complying with Bankruptcy Reform Act—Practice pointer
§ 2:25	Sharing of customer information with third parties— Opt-in versus opt-out issues
§ 2:26	Commercial emails—Double opt-ins
§ 2:27	Blogging
§ 2:28	Americans with Disabilities Act and websites
§ 2:29	Understanding ISP compliance
§ 2:30	Amendments to privacy policies
§ 2:31	Are IP addresses "personally identifiable information"?

§ 2:32	Subscriber information and privacy
§ 2:33	Online offers
§ 2:34	Restore Online Shopper Confidence Act
§ 2:35	—Requirements for certain Internet-based sales
§ 2:36	—Prohibition on data-pass used to facilitate certain deceptive Internet sales transactions
$\S 2:37$	—Application with other law
§ 2:38	—Negative option marketing on the Internet
§ 2:39	—Enforcement by Federal Trade Commission
$\S 2:40$	—Enforcement by State attorneys general
§ 2:41	—Notice to Commission required for Attorney General action
$\S 2:42$	—Construction
§ 2:43	—Preemption
§ 2:44	Social media privacy and Electronic Communications Privacy Act
32:45	Social media and employers' requests for information
$\S 2:46$	Student online privacy statutes
$\S 2:47$	First Amendment and social media
$\S 2:48$	Privacy and Twitter posts
§ 2:49	National Labor Relations Board and social media— Costco Wholesale Corp., and Boch Imports
§ 2:50	Social media discovery

II. SPECIFIC STATE PROVISIONS

A. IN GENERAL

- § 2:52 Opt-out issues and public display of information

B. ARKANSAS

§ 2:53 Arkansas

C. CALIFORNIA

§ 2:54	The Online Privacy Protection Act—Including DN7 amendment
§ 2:55	Enforcement of Online Privacy Protection Act (Cal OPPA)
$\S 2:56$	Online Protection of Minors
$\S 2:57$	—Restrictions on advertising
§ 2:58	-Restrictions on use, disclosure, or compiling of
	information regarding minors
$\S 2:59$	—No requirement to collect or retain information
8 2.60	—Advertising service compliance

§ 2:61	—Exceptions
§ 2:62	—Deletion of information by minors
§ 2:63	—Deemed compliance
§ 2:64	—No requirement to collect age information
§ 2:65	—Effective date
§ 2:66	Internet and student marketing law—Section operative January 1, 2016
§ 2:67	—Exceptions
§ 2:68	Privacy of pupil records—Information obtained from social media
§ 2:69	Restrictions on direct marketing—Shine the Light
§ 2:70	—Disclosure
§ 2:71	— Forms that do not trigger the statute
§ 2:72	——Substantive requirements
§ 2:73	— Other specialized requirements
§ 2:74	— Other exceptions
§ 2:75	— —Enforcement
§ 2:76	— — Waiver
§ 2:77	—Shine the Light law interpreted
§ 2:78	Electronic Commerce Act of 1984
§ 2:79	California Internet of Things (IoT) Security Law—
3 20	Introduction
§ 2:80	—Exemptions
§ 2:81	—Enforcement
§ 2:82	—Effective date
3 -10-	211000210 4400
D.	COLORADO
§ 2:83	ISP data retention requirements
§ 2:84	Information regarding peace officers on the Internet
E.	DELAWARE
§ 2:85	Student Data Privacy Protection Act—Operator duties
§ 2:86	—Operator prohibited activities
§ 2:87	—Exclusions
§ 2:88	—Effective date
§ 2:89	—Enforcement
§ 2:90	Internet privacy—Online and Personal Privacy
	Protection Act
§ 2:91	 —Prohibitions on online marketing or advertising to a child
§ 2:92	——Posting of privacy policy by operators of
	commercial online sites and services
§ 2:93	— Privacy of information regarding book service
	users

xviii

TABLE OF	CONTENTS
$\S 2:95$	 — — Enforcement — — Reporting requirements — Enforcement
F.	GEORGIA
	Disclosure requirements Data security requirements for telecommunications companies
G.	ILLINOIS
§ 2:99 § 2:100 § 2:101	Restrictions upon cancellation of Internet service Collection and storage of IP addresses Illinois supervised release
Н.	MICHIGAN
§ 2:102	Michigan
I.	MINNESOTA
§ 2:103 § 2:104 § 2:105	ISP disclosure laws Wireless telecommunication Deceptive trade practice statute
J.	NEBRASKA
§ 2:106	Internet privacy policies
K.	NEVADA
§ 2:107	Restrictions upon ISPs
L.	NEW JERSEY
§ 2:108 § 2:109 § 2:110 § 2:111	-Enforcement -Exceptions
M.	OKLAHOMA
§ 2:112	State employee's personal information

N. PENNSYLVANIA

§ 2:113 Internet privacy policies

O. TENNESSEE

§ 2:114 Restrictions upon certain Internet conduct

P. UTAH

§ 2:115 Notice of Intent to Sell Nonpublic Personal Information Act

CHAPTER 3. THE CHILDREN'S ONLINE PRIVACY PROTECTION ACT

§ 3:1	Children's Online Privacy Protection Act (COPPA)—A law in transition
§ 3:2	Age representations and click-wrap agreements
§ 3:3	Revised COPPA regulations
§ 3:4	Key concepts—What is personal information
§ 3:5	—Disclosure
§ 3:6	—Operators of websites and online services
§ 3:7	—Obtaining verifiable parental consent
§ 3:8	Regulation of unfair or deceptive acts or practices in connection with the collection, use, and/or disclosure of personal information from and about children on the Internet
§ 3:9	Notice
§ 3:10	Voluntary notice to parent of a child's online activities not involving the collection, use, or disclosure of personal information
§ 3:11	Notice to a parent of operator's intent to communicate with the child multiple times
§ 3:12	Notice to a parent in order to protect a child's safety
§ 3:13	Parental consent
§ 3:14	Right of parent to review personal information provided by a child
§ 3:15	Prohibition against conditioning a child's participation on collection of personal information
§ 3:16	Confidentiality, security, and integrity of personal information collected from children
§ 3:17	Enforcement
§ 3:18	Data retention and deletion requirements
§ 3:19	Safe harbor programs
§ 3:20	Voluntary commission approval processes
§ 3:21	Severability
§ 3:22	Practice tip—Complying with COPPA
§ 3:23	COPPA FAQ
§ 3:24	FTC enforcement actions—Pre-COPPA enforcement— In the Matter of Geocities

§ 3:25	——In the Matter of Liberty Financial Companies, Inc
§ 3:26	—COPPA enforcement matters—In the Matter of
	Toysmart.com
$\S 3:27$	— —In the Matter of Bigmailbox.Com, Inc., Monarch
	Services, Inc., Et Al., and Looksmart, Ltd., Noan
	Quan
§ 3:28	——In the Matter of Lisa Frank, Inc
§ 3:29	——In the Matter of American Pop Corn Company
	(Jolly Time)
§ 3:30	——In the Matter of The Ohio Art Company
0.01	(Etch-A-Sketch)
§ 3:31	— — Mrs. Field's Famous Brands, Inc
§ 3:32	——In the Matter of Hershey Foods Corporation
§ 3:33	— —Bonzi Software, Inc
§ 3:34	——In the Matter of UMG
§ 3:35	——In the Matter of Xanga.com, Inc
§ 3:36	— —In the Matter of Imbee.com and Industrious Kid,
e o o =	Inc.
§ 3:37	——In the Matter of Sony BMG Entertainment
§ 3:38	——In the Matter of Iconix Brand Group
§ 3:39	——In the Matter of Playdom, Inc., and Howard
0 40	Marks
§ 3:40	— — W3 Innovations, LLC
§ 3:41	— USA v. Jones O. Godwin, doing business as
	skidekids.com (United States District Court for the Northern District of Georgia)
§ 3:42	——RockYou, Inc.
§ 3.42 § 3:43	— — Artist Arena, LLC
§ 3.43 § 3:44	——Artist Arena, ELC ——Path, Inc.
§ 3.44 § 3:45	——In re the Matter of Yelp Inc.
§ 3.43 § 3:46	——In the Matter of TinyCo.
§ 3.40 § 3:47	——In the Matter of ImyCo. ——In re the Matter of LAI Systems
§ 3.47 § 3:48	——In the Matter of Retro Dreamer
2 0.40	— — In the matter of field Dreamer

CHAPTER 4. THE COMMUNICATIONS DECENCY ACT

§ 4:1	Communications Decency Act (CDA)
§ 4:2	CDA—Restrictions upon liability—Good Samaritan
	blocking and screening of offensive material
§ 4:3	— —Civil liability
§ 4:4	— Effect on other laws
§ 4:5	CDA and defining who is an interactive service provider
§ 4:6	Immunity for the conduct of affiliates
8 4.7	The CDA and orine sites

§ 4:8	The CDA and social networking
§ 4:9	CDA—Immunity v. defense
§ 4:10	—Disclosures by interactive computer services
§ 4:11	Takeaways from the Ninth Circuit for the CDA
§ 4:12	Prior rulings regarding categories and the CDA
§ 4:13	The CDA and employers
§ 4:14	CDA—Criminal liability
§ 4:15	The CDA and injunctive relief
§ 4:16	Practice tip—CDA
§ 4:17	CDA and state securities laws
§ 4:18	Statements in Form U-5 and immunity for online
	defamation
§ 4:19	E-mails and the CDA
§ 4:20	The CDA held not to be a basis for a motion to dismiss

CHAPTER 5. UNAUTHORIZED ACCESS TO NETWORKS/COMPUTER CRIMES

I. COMPUTER FRAUD AND ABUSE ACT

§ 5:1	Introduction
§ 5:2	Defining a "computer" under the CFAA
§ 5:3	Defining a protected computer
§ 5:4	Preemption of state trespass law on unauthorized access
§ 5:5	Acts that constitute crimes under the CFAA
§ 5:6	Interstate commerce requirement
§ 5:7	Requirement of intent
§ 5:8	Intent for unauthorized access and fraud under the CFAA
§ 5:9	Definition of fraud
§ 5:10	Knowledge of value not required
§ 5:11	What constitutes damages under CFAA
§ 5:12	Must a plaintiff allege damage and loss?
§ 5:13	Inconsistent ruling regarding "loss"
§ 5:14	Are litigation expenses loss?
§ 5:15	Are data costs loss in the smartphone context?
§ 5:16	The CFAA and deletions
§ 5:17	Copying of data held to be insufficient
§ 5:18	Aggregation of damages under CFAA
§ 5:19	CFAA violations and circumstantial evidence
§ 5:20	Unsolicited emails creating damage
§ 5:21	Loss without damage
§ 5:22	The CFAA and employee breaches of loyalty and data destruction

§ 5:23	The CFAA and sovereign immunity
§ 5:24	Applying the CFAA
§ 5:25	CFAA and value of information—Criminal convictions and market value
§ 5:26	CFAA and nonprotectable information
§ 5:27	Employer's vicarious liability under CFAA
§ 5:28	Examples of violations of CFAA—Unauthorized access including technological barriers
§ 5:29	—Gathering of email addresses
§ 5:30	—Diversion of customers/harvesting of customer lists
§ 5:31	—Defective software/time bombs
§ 5:32	—Setting of cookies
§ 5:33	—Authorized users exceeding scope of authority
§ 5:34	—Illegal subpoenas
§ 5:35	—Sending emails to a personal account
§ 5:36	—Mere review of information
§ 5:37	—Download of source code
§ 5:38	—Internet advertising
§ 5:39	—Login pages and the CFAA
§ 5:40	—CFAA and misuse of passwords
§ 5:41	—ToS violation and social media
§ 5:42	—CFAA and "throttling"
§ 5:43	Lack of revocation of authority
§ 5:44	Mere violation of license under CFAA
§ 5:45	CFAA and terms of service
§ 5:46	Enforcement provisions
§ 5:47	Injunctive relief under CFAA
§ 5:48	Preemption by the CUTSA
§ 5:49	Obtaining customer information and loss under CFAA
§ 5:50	Misappropriation of trade secrets via email forwarding
§ 5:51	Conspiracy to violate the CFAA
§ 5:52	Does Rule 9(b)'s heightened pleading standard apply to § 1030(a)(4) claims?

II. THE ECONOMIC ESPIONAGE ACT

§ 5:53	Theft of trade secrets
8 5.51	Danamia amianami

- § 5:54 Economic espionage involving foreign states
- § 5:55 Exceptions to liability
- § 5:56 Forfeiture
- § 5:57 Confidentiality issues
- § 5:58 Civil proceedings

III. FRAUD AND ACCESS DEVICES

§ 5:59 Fraud and access devices—Generally

§ 5:60 Criminal enforcement § 5:61 Exceptions to liability § 5:62 Extraterritorial violations

CHAPTER 6. COMPUTER CRIMES— SPECIFIC STATE PROVISIONS

A. ALABAMA

§ 6:1 Alabama Digital Crime Act

B. ARIZONA

- § 6:2 Computer tampering
- § 6:3 Unauthorized release of proprietary or confidential computer security information

C. ARKANSAS

- § 6:4 Computer fraud
- § 6:5 Computer trespass
- § 6:6 Civil enforcement
- § 6:7 Unlawful computerized communications
- § 6:8 Unlawful acts regarding computers
- § 6:9 Unlawful interference with access to computers
- § 6:10 Unlawful use or access to computers
- § 6:11 Unlawful use of encryption
- § 6:12 Computer password disclosure

D. CALIFORNIA

- § 6:13 Unauthorized access to computers and networks
- § 6:14 No acquisition of confidential information
- § 6:15 Access to software and data
- § 6:16 Restrictions upon academic institutions
- § 6:17 Civil remedies
- § 6:18 Criminal penalties
- § 6:19 Cyberstalking—Civil remedies
- § 6:20 —Criminal remedies

E. COLORADO

- § 6:21 Computer crimes
- § 6:22 Enforcement

F. CONNECTICUT

§ 6:23 Unauthorized use of computer or computer network

xxiv

§ 6:24	Unlawful sale of certain software
§ 6:25	—Exceptions to liability
§ 6:26	—Criminal enforcement
§ 6:27	—Civil enforcement
§ 6:28	Computer crime
§ 6:29	-Prohibited acts-Unauthorized access to a computer
	system
§ 6:30	— — Theft of computer services
§ 6:31	 — Interruption of computer services
§ 6:32	 — Misuse of computer system information
§ 6:33	——Destruction of computer equipment
§ 6:34	—Criminal enforcement
§ 6:35	—Additional computer crimes related to terrorism
§ 6:36	—Civil remedies

G. DELAWARE

§ 6:37 Computer crimes
§ 6:38 —Unauthorized access
§ 6:39 —Crimes involving emails
§ 6:40 —Enforcement

H. FLORIDA

§ 6:41 Restrictions upon use of personal data § 6:42 Creation of identities § 6:43 Offenses against intellectual property § 6:44 Offenses against users of computers and electronic devices -Modification of equipment § 6:45 § 6:46 —Civil remedies § 6:47 -Forfeiture § 6:48 -Exemptions from civil remedies § 6:49 Offenses against public utilities § 6:50 Offenses against users of computers and electronic devices—Exceeding authorized access § 6:51 Trade secret exemption from public records act requests

I. GEORGIA

§ 6:52 Computer systems protection
§ 6:53 —Computer trespass
§ 6:54 —Computer invasion of privacy
§ 6:55 —Computer forgery
§ 6:56 —Computer password disclosure

8 6.57	—Civil relief
	—Criminal enforcement
§ 6:59	
3 0.00	Transmission of trade names of trademarks
J. H	AWAII
§ 6:60	Computer fraud
§ 6:61	Computer damage
§ 6:62	Use of computer in commission of separate crime
§ 6:63	Unauthorized computer access
§ 6:64	Forfeiture of property
K. II	ОАНО
§ 6:65	Computer crime
L. II	LINOIS
§ 6:66	Computer tampering
§ 6:67	
§ 6:68	Computer fraud
0	T. T
M. I	OWA
§ 6:69	Electronic mail—Transmission of unsolicited bulk electronic mail
§ 6:70	—Sale or offer of direct sale of prescription drugs
	—Use of encryption
§ 6:72	· -
	ANSAS
§ 6:73	
	Enforcement
§ 6:75	Defenses
O. L	OUISIANA
§ 6:76	Offenses against intellectual property
§ 6:77	Offenses against computer equipment or supplies
§ 6:78	Offenses against computer users
§ 6:79	Criminal use of internet virtual street-level map-
5	Enhanced penalties
§ 6:80	Computer fraud
§ 6:81	Offenses against electronic mail service providers
§ 6:82	Computer tampering
§ 6:83	Criminal use of Internet, virtual, street map

xxvi

TABLE OF CONTENTS

P. MAINE

§ 6:84 Criminal invasion of computer privacy

Q. MARYLAND

§ 6:85 Computer crimes

R. MASSACHUSETTS

§ 6:86 Computer crimes

S. MICHIGAN

- § 6:87 Accessing computers with the intent to defraud § 6:88 Accessing computers to acquire property or use computer services
- § 6:89 Use of computers to commit a crime

T. MINNESOTA

- § 6:90 Department of revenue
- § 6:91 Computer damage
- § 6:92 Computer theft
- § 6:93 Unauthorized computer access
- § 6:94 Facilitating access to computer security system
- § 6:95 Criminal use of encryption

U. MISSISSIPPI

- § 6:96 Computer fraud
- § 6:97 Offenses against computer users
- § 6:98 Tampering with computer equipment
- § 6:99 Offenses against intellectual property
- § 6:100 Cyberstalking
- § 6:101 Posting injurious messages
- § 6:102 Identity theft
- § 6:103 Expungement of criminal charges
- § 6:104 Additional penalties
- § 6:105 Improper use of a scanning device

V. MISSOURI

- § 6:106 Tampering with computer data
- § 6:107 Tampering with computer equipment
- § 6:108 Tampering with computer users

W. NEBRASKA

§ 6:109 Computer crimes

§ 6:1	110	Depriving or obtaining property or services
§ 6:1		Harming or disrupting operations
§ 6:1		Obtaining confidential public information
§ 6:1	113	Access without authorization
X.	NE	VADA
§ 6:1	114	Overview of Nevada criminal law
§ 6:1		Financial forgery laboratories
§ 6:1		Other identity theft crimes
§ 6:1		Public officials and databases
§ 6:1		Possession or sale of information to establish false status
§ 6:1	119	Computer crimes
§ 6:1	120	Interference with access or use of computers
§ 6:1	121	Forgery by creation, alteration, or deletion of data or other information
§ 6:1	122	Email restrictions
§ 6:1	123	Damages and enforcement
§ 6:1	124	Unlawful use of encryption
§ 6:1	125	Unlawful acts regarding information services
§ 6:1	126	Presumption of employee authority
§ 6:1	127	Civil enforcement
Y.	NE	W HAMPSHIRE
§ 6:1	128	Computer crimes
§ 6:1	129	Misuse of computer network information
§ 6:1	130	Destruction of computer equipment
§ 6:1	131	Criminal enforcement
Z.	NE	W JERSEY
§ 6:1	132	Computer related theft
§ 6:1		Disclosure of data from wrongful access
§ 6:1		Copy or alteration of program or software with reduced value
§ 6:1	135	Calculation of the value of property or services
AA	. N	EW MEXICO
§ 6:1	136	Computer Crimes Act
§ 6:1		Computer access with intent to defraud or embezzle
§ 6:1		Computer abuse
§ 6:1		Unauthorized computer use
§ 6:1		Remedies

xxviii

$\mathbf{R}\mathbf{R}$	NEW	VORK
DD.	TAIL W	IUIN

|--|

- § 6:142 Computer trespass
- § 6:143 Computer tampering
- § 6:144 Unlawful duplication of computer related material
- § 6:145 Criminal possession of computer related material
- § 6:146 Defenses
- § 6:147 Theft of computer service

CC. NORTH CAROLINA

- § 6:148 Accessing computers
- § 6:149 Accessing government computers
- § 6:150 Damaging computers
- § 6:151 Denial of computer services
- § 6:152 Denial of governmental computer services
- § 6:153 Computer trespass
- § 6:154 Exceptions to liability
- § 6:155 Conversion of computer information under North Carolina law

DD. NORTH DAKOTA

- § 6:156 Computer crimes
- § 6:157 Fraudulent or misleading communications
- § 6:158 Unauthorized scanning of a network under North Dakota's computer crime law

EE. OHIO

§ 6:159 Computer crimes

FF. OKLAHOMA

- § 6:160 Computer Crimes Act
- § 6:161 Presumption of violation
- § 6:162 Criminal enforcement
- § 6:163 Access to computers
- § 6:164 Pre-action subpoenas

GG. OREGON

§ 6:165 Computer crimes

HH. PENNSYLVANIA

§ 6:166 Unlawful use of computer

§ 6:167	Disruption of service
§ 6:168	Restitution and defenses
§ 6:169	Computer theft
§ 6:170	Unlawful duplication
§ 6:171	Computer trespass
§ 6:172	Distribution of computer viruses
§ 6:173	Computer-assisted remote harvesting of animals
§ 6:174	Email crimes
§ 6:175	False or misleading statements in Internet privacy
	policies
II. RE	IODE ISLAND
§ 6:176	Access to computer for fraudulent purposes
§ 6:177	Unauthorized access
§ 6:178	Computer scanned documents
§ 6:179	Computer trespass
§ 6:180	Cyberstalking and cyberharassment
§ 6:181	Transmission of false data
§ 6:182	Tampering with computer source documents
§ 6:183	Criminal penalties for felony violations
§ 6:184	Civil remedies
JJ. S	OUTH CAROLINA
§ 6:185	Computer arimog in the first degree
§ 6:186	Computer crimes in the first degree Computer crimes in the second degree
§ 6:187	Computer crimes in the second degree Computer crimes in the third degree
§ 6:188	Civil remedies
3 0.100	Olvii Tollicares
KK. T	ENNESSEE
§ 6:189	Computer crime law
§ 6:190	Restrictions on electronic mail
§ 6:191	Criminal enforcement
§ 6:192	Civil remedies
§ 6:193	Protection of secrecy and security
§ 6:194	Implied consent under the Tennessee Personal and Commercial Computer Act of 2003
§ 6:195	Litigation under Tennessee's computer crime law
§ 6:196	Scanning devices and reencoder
LL. T	EXAS
§ 6:197	Breach of computer security
§ 6:198	Online solicitation of minor

§ 6:199	Tampering	with	${\bf direct}$	recording	electronic	voting
	machines					

MM.	VERMONT
-----	----------------

§ 6:200	Unauthorized access
8 6.201	Access to computers for frau

- $\S~6{:}201~$ Access to computers for fraudulent purposes
- § 6:202 Alteration, damage, or interference
- § 6:203 Theft or destruction
- § 6:204 Civil remedies

NN. VIRGINIA

- § 6:205 Computer fraud
- § 6:206 Unsolicited email
- § 6:207 Computer trespass
- § 6:208 Computer invasion of privacy
- § 6:209 Use of computer to gather identifying information
- § 6:210 Theft of computer services
- § 6:211 Personal trespass by computer
- § 6:212 Computer as instrument of offense
- § 6:213 Cyberstalking
- § 6:214 Unlawful use of encryption
- § 6:215 Embezzlement
- § 6:216 Damages and enforcement
- § 6:217 Civil enforcement
- § 6:218 Preemption

OO. WASHINGTON

- § 6:219 Computer trespass
- § 6:220 Fraud in obtaining telecommunications service

PP. WEST VIRGINIA

- § 6:221 Computer fraud
- § 6:222 Access to certain government computers
- § 6:223 Unauthorized access to computer services
- § 6:224 Unauthorized possession of computer data or programs
- § 6:225 Alteration or destruction of computer equipment
- § 6:226 Disruption of computer services
- § 6:227 Unauthorized possession of computer information
- § 6:228 Disclosure of computer security information
- § 6:229 Obtaining confidential public information
- § 6:230 Computer invasion of privacy
- § 6:231 Fraud regarding access devices

\$ 6:232 \$ 6:233 \$ 6:234 \$ 6:235 \$ 6:236 \$ 6:237	Endangering public safety Harassment by computer Soliciting minor via computer Using a computer as an instrument of forgery Defenses to criminal actions Civil remedies
QQ.	WISCONSIN
§ 6:238 § 6:239	Offenses against computer data and programs Offenses against computers, computer equipment, or supplies
§ 6:240	Computer crime statute and deletions
RR.	WYOMING
§ 6:241	Computer crime—Crimes against intellectual property
§ 6:242	——Penalties
§ 6:243	Crimes against computer equipment or supplies
§ 6:244	Interruption or impairment of governmental operations or public services
§ 6:245	Crimes against computer users
§ 6:246	—Enforcement
_	PTER 7. PRIVACY IN ELECTRONIC WIRE COMMUNICATIONS
I. OV	/ERVIEW
	/ERVIEW
§ 7:1	/ERVIEW In general
§ 7:1 § 7:2	ERVIEW In general History of wiretapping
§ 7:1 § 7:2 § 7:3	/ERVIEW In general History of wiretapping Fourth Amendment and wiretapping
§ 7:1 § 7:2 § 7:3 § 7:4	TERVIEW In general History of wiretapping Fourth Amendment and wiretapping Overview of ECPA
§ 7:1 § 7:2 § 7:3 § 7:4 § 7:5	TERVIEW In general History of wiretapping Fourth Amendment and wiretapping Overview of ECPA Temporal distinctions—An introduction
§ 7:1 § 7:2 § 7:3 § 7:4	TERVIEW In general History of wiretapping Fourth Amendment and wiretapping Overview of ECPA
\$ 7:1 \$ 7:2 \$ 7:3 \$ 7:4 \$ 7:5 \$ 7:6	In general History of wiretapping Fourth Amendment and wiretapping Overview of ECPA Temporal distinctions—An introduction Temporal distinctions, interceptions, and inferences Lack of rerouting or other interception fatal to ECPA
\$ 7:1 \$ 7:2 \$ 7:3 \$ 7:4 \$ 7:5 \$ 7:6 \$ 7:7	In general History of wiretapping Fourth Amendment and wiretapping Overview of ECPA Temporal distinctions—An introduction Temporal distinctions, interceptions, and inferences Lack of rerouting or other interception fatal to ECPA claim Understanding the temporal nature Temporal distinctions—Forwarding email
\$ 7:1 \$ 7:2 \$ 7:3 \$ 7:4 \$ 7:5 \$ 7:6 \$ 7:7	In general History of wiretapping Fourth Amendment and wiretapping Overview of ECPA Temporal distinctions—An introduction Temporal distinctions, interceptions, and inferences Lack of rerouting or other interception fatal to ECPA claim Understanding the temporal nature Temporal distinctions—Forwarding email Public v. private service providers
\$ 7:1 \$ 7:2 \$ 7:3 \$ 7:4 \$ 7:5 \$ 7:6 \$ 7:7 \$ 7:8 \$ 7:9	In general History of wiretapping Fourth Amendment and wiretapping Overview of ECPA Temporal distinctions—An introduction Temporal distinctions, interceptions, and inferences Lack of rerouting or other interception fatal to ECPA claim Understanding the temporal nature Temporal distinctions—Forwarding email Public v. private service providers What is "ECS"?
\$ 7:1 \$ 7:2 \$ 7:3 \$ 7:4 \$ 7:5 \$ 7:6 \$ 7:7 \$ 7:8 \$ 7:9 \$ 7:10 \$ 7:11 \$ 7:12	In general History of wiretapping Fourth Amendment and wiretapping Overview of ECPA Temporal distinctions—An introduction Temporal distinctions, interceptions, and inferences Lack of rerouting or other interception fatal to ECPA claim Understanding the temporal nature Temporal distinctions—Forwarding email Public v. private service providers
\$ 7:1 \$ 7:2 \$ 7:3 \$ 7:4 \$ 7:5 \$ 7:6 \$ 7:7 \$ 7:8 \$ 7:9 \$ 7:10 \$ 7:11	In general History of wiretapping Fourth Amendment and wiretapping Overview of ECPA Temporal distinctions—An introduction Temporal distinctions, interceptions, and inferences Lack of rerouting or other interception fatal to ECPA claim Understanding the temporal nature Temporal distinctions—Forwarding email Public v. private service providers What is "ECS"?

A summary of disclosure restrictions

xxxii

§ 7:15

- § 7:16 The ECPA and its lack of clarity
- § 7:17 Constitutionality of ECPA
- § 7:18 ECPA and preemption—A conflict in holdings
- § 7:19 Purpose of ECPA
- § 7:20 Standing under the Stored Communications Act
- § 7:21 ECPA and extraterritoriality

II. TITLE I: THE WIRETAP ACT

A. RESTRICTIONS ON INTERCEPTIONS AND DISCLOSURES

- § 7:22 Prohibited interceptions and disclosures of communications
- § 7:23 Collection of referrer header is not an interception of content
- § 7:24 Oral communications and reasonable expectation of privacy
- § 7:25 Review of emails on a laptop may not violate the ECPA
- § 7:26 Definition of intent for ECPA
- § 7:27 Practice tip—Consent under the ECPA
- § 7:28 Who is a party?
- § 7:29 Exceptions to consent
- § 7:30 Mandated disclosure of email—Court ordered consent
- § 7:31 When is a communication aurally acquired under the ECPA
- § 7:32 Requirement that communication be intercepted in transit for Title I violation
- § 7:33 Exceptions to liability
- § 7:34 —Disclosure to government entities
- § 7:35 —Acting under color of authority and participants in communications
- § 7:36 —Systems that transmit public communications
- § 7:37 —Public systems—Practice tip
- § 7:38 —Interception due to interference
- § 7:39 —Fraudulent, unlawful, or abusive acts
- § 7:40 Interception of communications by computer trespassers
- § 7:41 Restrictions upon interception of transmissions service providers that provide service to the public
- § 7:42 Recipient issues and consent to interception
- § 7:43 Interceptions by party to communication
- § 7:44 EPCA and access to servers
- § 7:45 Accessing coworker's email accounts
- § 7:46 Listening to a wrongfully acquired tape of a phone call is not an acquisition

§	7:47	Use of another's login information
§	7:48	Enforcement
§	7:49	Gmail litigation
§	7:50	Availability of civil liability for aiding and abetting violation of Wiretap Act
§	7:51	Requirement of commercial gain for certain violations
§	7:52	Civil damages
§	7:53	Lack of civil remedy for violation of section 2512
§	7:54	Defense for good-faith reliance upon a warrant
§	7:55	Governmental liability under the ECPA
§	7:56	ECPA liability and municipalities
§	7:57	Requirement of actual damages under ECPA
§	7:58	Number of SCA violations
§	7:59	Governmental civil liability
§	7:60	Exclusion of evidence due to violation of ECPA and emails
§	7:61	Authorization of interception of communications
§	7:62	Enforcement of the communications assistance for Law Enforcement Act
§	7:63	Videotaping of employees under the ECPA
§	7:64	Private right of action under the ECPA for interception of encrypted signals
§	7:65	Good faith warrant exception
§	7:66	Good faith reliance on invalid warrant as ECPA defense
§	7:67	Aiding and abetting liability for ECPA violations
_	7:68	Procurement liability under ECPA
_	7:69	Consent under the ECPA
_	7:70	Participation in email investigations
_	7:71	Purchasers of assets or businesses can monitor prior email addresses
§	7:72	Is mere access to an email account sufficient to establish an ECPA violation?
§	7:73	Request for subscriber information and anonymous subpoenas
	В.	RESTRICTIONS ON DEVICES
§	7:74	Manufacture, distribution, possession, and advertising of wire, oral, or electronic communication interception devices
§	7:75	Exceptions to liability
§	7:76	Enforcement

III. TITLE II: STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS ACT

§	7:77	Intent of Act
Ş	7:78	Distribution of stored communications
Š	7:79	Restrictions
Š	7:80	Exceptions permitting disclosure
§	7:81	Remote computing services and Warshak—No clear answers for now
§	7:82	Disclosures of customer records
§	7:83	Disclosure of information regarding a subscriber
§	7:84	Requirements of a court order
§	7:85	Recent rulings regarding subscriber privacy
§	7:86	Intent under ECPA for disclosures by ISPs
§	7:87	Access to stored communications when sought by an intended recipient
§	7:88	Restrictions upon disclosures by public service providers
§	7:89	Out of district subpoenas under the ECPA
§	7:90	Civil subpoenas for stored communications and the ECPA
§	7:91	Violation of terms not actionable under the SCA for "public websites"
§	7:92	Public display and discovery
§	7:93	Procedural requirements of a court order
§	7:94	Requirement to preserve evidence
§	7:95	Backup preservation
§	7:96	Delays in notice
§	7:97	Cost reimbursement
§	7:98	Disclosures of stored communications by nonservice providers
§	7:99	Enforcement
§	7:100	Disclosure of intercepted communications in response to a subpoena
§	7:101	Civil actions and remedies
§	7:102	Limits on statutory damages
§	7:103	Actions against the United States
§	7:104	Preclusion of civil action

IV. PEN REGISTERS

§ 7:105	In general
§ 7:106	Government acquisition of real-time cellular phone
	data

§ 7:107	Fourth Amendment and pen registers/real-time tracking through historical cell site data
§ 7:108	The Patriot Act
V. AI	PPLICATION OF MONITORING LAWS
§ 7:109	Viewing of computer screen or other devices as an interception
§ 7:110	Screenshots and the ECPA
§ 7:111	Disclosure of information in excess of a privacy policy—No violation of the ECPA
§ 7:112	Seizure of devices as an interception
§ 7:113	Unauthorized access to information constitutes a violation of the ECPA
§ 7:114	Disclosures of information to third parties
§ 7:115	ISP's liability for gathering a subscriber's email
§ 7:116	Use of illegally intercepted communications
§ 7:117	Review and recording of voicemail
§ 7:118	Recording by spouses
§ 7:119	Interspousal immunity
§ 7:120	SCA still applies to "post transmission" emails
§ 7:121	Impact of governmental regulations
§ 7:122	Specificity of wiretap
§ 7:123	Sealing of call data content information
§ 7:124	ECPA and trial subpoenas
§ 7:125	Sealing of Section 2703(d) orders
§ 7:126	Keystroke loggers and common law liability
§ 7:127	Pocket dials and the ECPA
§ 7:128	A conflict in holdings in social media
§ 7:129	Impersonation of person is not a violation of the SCA
§ 7:130	Wi-Fi sniffing

CHAPTER 8. STATE ELECTRONIC AND WIRE COMMUNICATION LAWS

I. GENERAL CONSIDERATIONS

§ 7:131 ECPA and third-party data pass

- § 8:1 Introduction
- § 8:2 One party consent issues, generally
- § 8:3 The First Amendment and positions of special importance
- Constitutionality of wiretap laws that do not require § 8:4 confidentiality
- Wiretap law and anti-SLAPP statutes § 8:5

xxxvi

§ 8:6 Common law vicarious consent issues

II. STATE LAWS

A .	A -	T A		TN /I	T A
^	^		RA	\ I\ /I	
\rightarrow	\rightarrow	—	11	N IVI	\rightarrow

§ 8:7 § 8:8	Wiretapping—Criminal eavesdropping Criminal surveillance
§ 8:9	Installing an eavesdropping device
§ 8:10	Criminal possession of an eavesdropping device
§ 8:11	Divulging illegally obtained information
§ 8:12	Defenses
§ 8:13	Forfeiture of eavesdropping devices
В.	ALASKA
§ 8:14	Wiretapping—Improper use or disclosure of communications
§ 8:15	Eavesdropping
§ 8:16	Exceptions
§ 8:17	Duty to report
§ 8:18	Enforcement
C	ARIZONA
C.	AIIIZONA
§ 8:19	False or forged messages
§ 8:20	Opening, reading, or publishing sealed letter of another without authority
0 0 0 1	

- § 8:21 Sending threatening or anonymous letter
- § 8:22 Interception of wire, electronic, and oral communications and pen registers
- § 8:23 Divulging communication service information
- § 8:24 Possession of interception devices
- § 8:25 Duty to report
- § 8:26 Court applications by law enforcement
- § 8:27 Exceptions
- § 8:28 Defenses
- § 8:29 Right to compensation
- § 8:30 Surreptitious photographing, filming, or recording

D. CALIFORNIA

- § 8:31 California's Invasion of Privacy Act—An introduction
- $\S~8:32$ Defining a confidential communication under the Invasion of Privacy Act
- § 8:33 Existence of a service-observing exception—CIPA
- § 8:34 Gmail and email litigation

§ 8:35	Class certification and 632
§ 8:36	Statute of limitations on Invasion of Privacy Act claims
§ 8:37	Nature of allegation to survive demurrer or motion to dismiss
§ 8:38	Restrictions on eavesdropping
§ 8:39	Restrictions on recording confidential communications
§ 8:40	Exclusion from evidence
§ 8:41	Criminal enforcement of the restrictions on eavesdropping and recording confidential communications
§ 8:42	Restrictions on interception of cellular and cordless telephone communications
§ 8:43	Criminal enforcement
§ 8:44	Recordation of cordless or cellular radio telephones without consent
§ 8:45	Manufacture, sale, and possession of eavesdropping devices
§ 8:46	Police radio communications
§ 8:47	Disclosure of telegraphic or telephonic messages
§ 8:48	Procurement of telegraphic or telephone messages
§ 8:49	General exemptions
§ 8:50	Mailing list brokers
§ 8:51	Electronic tracking devices
§ 8:52	Restrictions upon lists for carpooling
§ 8:53	Application of California's Wiretap Law to calls originating in other states
§ 8:54	Choice of law without of state plaintiffs and CIPA
§ 8:55	Videotaping of employees—Immunity for certain government officials
§ 8:56	Immunity for violations of section 1708.8
§ 8:57	Immunity for violations of California's constitutional right of privacy
§ 8:58	Damages for violation of California's constitutional right of privacy
§ 8:59	Electronic Communications Privacy Act
E.	COLORADO
§ 8:60	Wiretapping devices
§ 8:61	Wiretapping
§ 8:62	Eavesdropping
§ 8:63	Exemptions
§ 8:64	Restrictions on telephones
§ 8:65	Abuse or obstruction of telephone and telegraph service
§ 8:66	Refusal to yield party line
xxxviii	

§ 8:67 § 8:68 § 8:69	Directory requirements Cloning equipment Civil enforcement	
F.	CONNECTICUT	
\$ 8:70 \$ 8:71 \$ 8:72 \$ 8:73 \$ 8:74 \$ 8:75 \$ 8:76	Civil action for wiretapping Restrictions on wiretapping Exemptions Tampering with private communications Eavesdropping Voyeurism Disseminating voyeuristic material	
G.	DELAWARE	
\$ 8:77 \$ 8:78 \$ 8:79 \$ 8:80 \$ 8:81 \$ 8:82 \$ 8:83 \$ 8:84 \$ 8:85 \$ 8:86 \$ 8:87 \$ 8:88 \$ 8:89 \$ 8:90 \$ 8:91 \$ 8:92 \$ 8:93 \$ 8:94 \$ 8:95	Interception of communications Single party consent and other exceptions Divulging contents of communications Enforcement Civil enforcement Interception devices Law enforcement issues Admissibility of evidence Applicable privileges Civil liability Defense to enforcement Breaking and entering to place or remove equipment Obstruction, impediment, or prevention of interception Stored wire and electronic communications and transactional records access Divulging contents of communications, generally Disclosure of information Limitation on actions Order requirements and motions to quash Civil actions	
§ 8:96	Pen registers and trap and trace devices	
H. FLORIDA		
\$ 8:97 \$ 8:98 \$ 8:99 \$ 8:100 \$ 8:101	Introduction Interception and disclosure of communications Key stroke loggers Restrictions on public providers of electronic communication service Enforcement	

§ 8:102	Manufacture, distribution, or possession of certain interception devices
§ 8:103	Confiscation of interception devices
§ 8:104	Prohibition on use of improperly intercepted wire or oral communications
§ 8:105	Civil remedies
§ 8:106	Good faith reliance
§ 8:107	Cutting, rerouting, and diverting of phone lines
§ 8:108	Unlawful access to stored communications
§ 8:109	Voluntary disclosure of customer communications or records
§ 8:110	Unlawful use of a two-way communications device
§ 8:111	Civil enforcement
§ 8:112	Good faith reliance as a defense to a sections 934.21 to 934.28 claim
§ 8:113	Restrictions on trap and trace and pen registers
§ 8:114	Defenses and cost reimbursement
§ 8:115	Criminal disclosure of a subpoena
I.	GEORGIA
§ 8:116	Restrictions on improper viewing through windows or doors
§ 8:117	Unlawful eavesdropping or surveillance
§ 8:118	Possession, sale, and distribution of eavesdropping devices
§ 8:119	Law enforcement
§ 8:120	Public Service Commission licenses to intercept telecommunications
§ 8:121	Consent
§ 8:122	Stored communications—Access to stored communications
§ 8:123	Inadmissibility of evidence
§ 8:124	Criminal enforcement
J.	ILLINOIS
§ 8:125	Eavesdropping
§ 8:126	Exempted acts
§ 8:127	Interception of communications by prison officials
§ 8:128	Additional exemptions
§ 8:129	Recording of interceptions
§ 8:130	Notice of interception
§ 8:131	Criminal enforcement
§ 8:131	Restrictions on the admission of evidence
•	
§ 8:133	Civil remedies

§ 8:134 § 8:135	Assistance by common carriers Discovery of an eavesdropping device
K.	MAINE
\$ 8:136 \$ 8:137 \$ 8:138 \$ 8:139 \$ 8:140 \$ 8:141 \$ 8:142 \$ 8:143 \$ 8:144	Interception of oral communications Disclosure or use of wire or oral communications Duty to report Possession of interception devices Sale of interception devices Civil enforcement Exceptions Disclosure to another state agency Exclusion from evidence
L.	MARYLAND
\$ 8:145 \$ 8:146 \$ 8:147 \$ 8:148 \$ 8:149 \$ 8:150 \$ 8:151 \$ 8:152	Wiretapping Other interceptions Two party consent Additional exceptions Additional restrictions Police accessing text messages Enforcement Additional restrictions
M.	MASSACHUSETTS
§ 8:153 § 8:154 § 8:155	Interception of oral communications prohibited Application to electronic communications Editing of tape recordings in judicial proceeding prohibited
§ 8:156	Disclosure or use of wire or oral communications prohibited
§ 8:157	Disclosure of contents of applications, warrants, renewals, and returns prohibited
§ 8:158	Possession of interception devices prohibited
§ 8:159	Vicarious liability
§ 8:160	Exemptions to restrictions on interceptions
§ 8:161	Permitted disclosures and use of intercepted wire or oral communications
§ 8:162	Privileged communications
§ 8:163	Suppression of evidence
§ 8:164	Civil remedies
§ 8:165	Defenses to civil causes of action
§ 8:166	Other provisions

§ 8:167	Massachusetts wiretap statute and application to cellular technology
N.	MICHIGAN
§ 8:1 6 8	Divulging contents of message
§ 8:169	Trespassing for purpose of eavesdropping
§ 8:170	Eavesdropping upon a private conversation
§ 8:171	One party or two party consent
§ 8:172	Installation of devices
§ 8:173	Use or divergence of information in violation of other laws
§ 8:174	Unlawful manufacture, possession, or transfer of eavesdropping devices
§ 8:175	Exceptions
§ 8:176	Civil remedies
§ 8:177	Civil cause of action under Michigan's Wiretap Law
§ 8:178	Inapplicability of Michigan's eavesdropping law to electronic communications
§ 8:179	Lack of civil remedy for violation of Michigan's electronic communication law
§ 8:180	Prima facie evidence of certain violations
§ 8:181	Surveillance of an individual in certain forms of undress
§ 8:182	Exceptions
§ 8:183	Interruption of messages
§ 8:184	Refusal to yield use of party line
§ 8:185	Offenses related to publication in a telephone directory
§ 8:186	Telecommunications access devices
§ 8:187	Seizure of devices
§ 8:188	Malicious use of service
§ 8:189	Publication of a telecommunications access device
§ 8:190	Unauthorized use or diversion of telecommunications services
Ο.	MINNESOTA
§ 8:191	Restrictions on wiretapping
P.	MONTANA
§ 8:192	Privacy in communications
§ 8:193	—Two party consent
§ 8:194	Enforcement
§ 8:195	Montana's restrictions on recording private conversations

§ 8:167

TABLE OF CONTENTS

	conversations
Q.	NEVADA
§ 8:197	Wiretap
§ 8:198	Disclosure of existence, content, or substance of wire or radio communications
§ 8:199	Unauthorized connections
§ 8:200	Intrusion of privacy by listening device
§ 8:201	Enforcement
§ 8:202	Defenses
§ 8:203	Recording or telephone calls regarding emergency or service outages
§ 8:204	Interception of cellular calls and text messages under Nevada law
R.	NEW HAMPSHIRE
§ 8:205	Interception and disclosure of telecommunication or oral communications—Two party consent
§ 8:206	—Exceptions
S.	NEW JERSEY
§ 8:207	Wiretapping law
§ 8:208	Exceptions to liability
§ 8:209	Interception of radio communications
§ 8:210	Enforcement
§ 8:211	Interception devices
§ 8:212	Authorization to intercept communications
§ 8:213	Application for an order
§ 8:214	Grounds for entry of order
§ 8:215	Additional requirements for public facilities
§ 8:216	Requirements of an order
§ 8:217	Emergency authorization without an order
§ 8:218	Recording of intercepted communications
§ 8:219	Sealing of applications
§ 8:220	Inventories and inspection of intercepted communications
§ 8:221	Disclosure and use of intercepted communications
§ 8:222	Interception of communications relating to other offenses
§ 8:223	Improper disclosure of order or information regarding interceptions
§ 8:224	Service of copy of order and application before disclosure

§ 8:196 Montana's warrantless recording of telephone

§ 8:225	Motion to suppress
§ 8:226	Reports by judges regarding orders
§ 8:227	Civil enforcement
§ 8:228	Good faith reliance on an order as a defense
§ 8:229	Severability
§ 8:230	Stored Communications Act—Unlawful access to stored communications
§ 8:231	Disclosures by public service providers and remote computer service companies
§ 8:232	Prerequisites to access
§ 8:233	Backup preservation
§ 8:234	Cost reimbursement
§ 8:235	Civil action
§ 8:236	Good faith defenses to civil or criminal actions
Т.	NEW YORK
§ 8:237	Restrictions on evidence obtained via wiretapping
§ 8:238	New York's criminal restrictions on wiretapping— Eavesdropping
§ 8:239	Failure to report wiretapping
§ 8:240	Possession of eavesdropping devices
§ 8:241	Divulging an eavesdropping warrant
§ 8:242	Tampering with private communications
§ 8:243	Unlawfully obtaining communications information
§ 8:244	Failing to report criminal communications
§ 8:245	Unlawful surveillance
§ 8:246	Dissemination of an unlawful surveillance image in the second degree
§ 8:247	Dissemination of an unlawful surveillance image in the first degree
§ 8:248	Exceptions and application of certain provisions
§ 8:249	Eavesdropping and video surveillance warrants— Timing
§ 8:250	When eavesdropping and video surveillance warrants can be issued
§ 8:251	Applications for eavesdropping or video surveillance warrant
§ 8:252	Temporary authorization for eavesdropping or video surveillance
§ 8:253	Determination of applications for eavesdropping warrants
§ 8:254	Form and content of eavesdropping and video surveillance warrants
§ 8:255	Manner and time of execution of eavesdropping and video surveillance warrants

§ 8:256	Extension of eavesdropping and video surveillance warrants
§ 8:257	Progress reports and notice regarding eavesdropping and video surveillance warrants
8 8:258	Custody of warrants, applications, and recordings
§ 8:259	Reports to the administrative office of the United States courts
§ 8:260	Disclosure and use of information obtained
§ 8:261	Notice before use of evidence
§ 8:262	Good faith defense
U.	NORTH CAROLINA
§ 8:263	Wiretap law
8 8:264	Additional violations—Disclosure of interceptions
§ 8:265	Manufacture, distribution, possession, and advertising of certain devices
8 8:266	Civil enforcement
8 8:267	Good faith reliance defense
\$ 8:268	Authorization for wiretaps
V.	PENNSYLVANIA
\$ 8:269	Improper interception, disclosure, or use of communications
§ 8:270	Interceptions based upon consent
8 8:271	Other permitted interceptions
8 8:272	Exemptions for telemarketing or customer service,
	requirements, and data destruction
§ 8:273	Restrictions upon electronic, mechanical, or other devices
§ 8:274	Exceptions to restrictions on devices
§ 8:275	Seizure and forfeiture of devices
§ 8:276	Privileged communications
$\S 8:277$	Civil enforcement
§ 8:278	Defense
§ 8:279	Action for removal from office or employment
§ 8:280	Right to injunctive relief
W.	TEXAS
§ 8:281	Wiretap Act—Civil relief
8 8:282	Defenses
§ 8:283	Criminal wiretapping—Unlawful use of criminal instrument
§ 8:284	Unlawful interception, use, or disclosure of communications

§ 8:285	Public systems
§ 8:286	Effect of consent
§ 8:287	Creation or advertisement of interception devices
§ 8:288	Obstruction of monitoring
§ 8:289	Pen registers and trap and trace devices
§ 8:290	Unlawful access to stored communications
§ 8:291	Knowing disclosure of a communication
§ 8:292	Warrant requirements
§ 8:293	Texas law-enforcement warrants for installation of tracking equipment —Installation and use of pen register, esn reader, or similar equipment
§ 8:294	Texas law-enforcement warrants for installation of tracking equipment—Order authorizing installation and use of trap and trace device or similar equipment
§ 8:295	—Emergency installation and use of pen register or trap and trace device
§ 8:296	Texas law-enforcement warrants for mobile tracking devices
§ 8:297	Texas law-enforcement access to stored communications and other stored customer data—Grounds for a warrant
§ 8:298	—Requirements for government access to stored communications
§ 8:299	—Warrant issued in Texas for stored customer data or communications
§ 8:300	—Warrant issued in another state for stored customer data or communications
§ 8:301	—Backup preservation
§ 8:302	—Preclusion of notification
§ 8:303	—No cause of action
X.	VERMONT
§ 8:304	Wiretap prohibitions
Y.	WASHINGTON
§ 8:305	Wrongfully obtaining a telegraphic message
§ 8:306	Opening a sealed letter
§ 8:307	Interception or recording—Two party consent and other restrictions
§ 8:308	Civil enforcement
§ 8:309	Criminal enforcement
§ 8:310	Exemptions
§ 8:311	Other provisions
	=

§ 8:312	Washington	privacy	act and	limplied	consent

Z. DISTRICT OF COLUMBIA

§ 8:313	Interception, disclosure, and use of communications
§ 8:314	Enforcement
§ 8:315	Exceptions
§ 8:316	Possession, sale, distribution, manufacture, assembly, and advertising of interception devices
§ 8:317	Confiscation of interception devices
§ 8:318	Civil enforcement
§ 8:319	Defenses
§ 8:320	Restrictions and authorizations for government wiretapping

CHAPTER 9. EMPLOYEE PRIVACY

I. OVERVIEW

§ 9:1	Introduction
§ 9:2	Employee privacy in the workplace
§ 9:3	Searches of government employees
§ 9:4	Internal investigations and invasion of privacy claims
§ 9:5	Employee emails and the attorney-client privilege
§ 9:6	Right to purchase creating an expectation of privacy
§ 9:7	No general duty to monitor employee computer use
§ 9:8	Employee emails and the spousal privilege
§ 9:9	National Labor Relation Board's assessment of
	computer use policies
§ 9:10	Other employee email issues
§ 9:11	Employee privacy
§ 9:12	Personal use of systems
§ 9:13	Use of GPS for employee monitoring
§ 9:14	Videotaping in workplace—Generally
§ 9:15	Registered representatives and customer lists
§ 9:16	New York City restrictions on use of credit history in employment

II. FEDERAL AUTHORITIES

A. STATUTES

§ 9:17	Employee polygraphs
§ 9:18	Notice of protections
§ 9:19	Additional rulemaking and investigations
§ 9:20	Enforcement

§ 9:21	No waiver of rights
§ 9:22	Rights of examinee
§ 9:23	Exemptions
§ 9:24	Restrictions on number and duration of tests
§ 9:25	Qualifications and requirements of examiners
§ 9:26	Disclosure of information
§ 9:27	Preemption
	•
В.	REGULATIONS
§ 9:28	Employee Polygraph Protection Act—Scope of the Employee Polygraph Protection Act
§ 9:29	—Restrictions on conduct
§ 9:30	—Exemptions
§ 9:31	—Preemption
§ 9:32	—Notice requirements
§ 9:33	—Actions by the Secretary
§ 9:34	—Who is an "employer"?
§ 9:35	—Exclusions and exceptions—Public sector employers
§ 9:36	——National defense and security
§ 9:37	——Certain investigations
§ 9:38	——Drug testing
§ 9:39	——Access to property
§ 9:40	— —Exemptions for employers authorized to manufacture, distribute, or dispense controlled substances
§ 9:41	— —Employers providing security services
§ 9:42	— —Limitation on ongoing investigation exception
§ 9:43	——Additional limitations on exceptions for security
	and controlled substances
§ 9:44	— Rights of examinees
§ 9:45	—Pretest phase
§ 9:46	—Actual testing phase
§ 9:47	—Posttest phase
§ 9:48	—Qualifications and requirements of examiners
§ 9:49	—Three year record retention requirement
§ 9:50	—Disclosure of test information
§ 9:51	—Enforcement
§ 9:52	—Request for hearing

III. STATE AUTHORITIES

A. CALIFORNIA

 $\S~9.53$ $\;$ Restrictions on the use of polygraphs in certain contexts

xlviii

§ 9:54	Restrictions on certain employment application
	questions
§ 9:55	Civil enforcement
§ 9:56	Exceptions
§ 9:57	Consideration of certain information related to applications to cities and other governmental
	agencies
$\S 9:58$	Additional restrictions
§ 9:59	Application to other crimes
8 9.60	Cases interpreting section 432.7

§ 9:61 Disclosures to unions B. DELAWARE

 $\S~9:62~$ New Delaware law on employment and criminal records

C. PENNSYLVANIA

§ 9:63	Use of records for employment
§ 9:64	City of Philadelphia—Fair Criminal Records Screening
	Standards
§ 9:65	— — Prior arrest for a criminal offense
§ 9:66	— — Previous conviction for a criminal offense
§ 9:67	— —Enforcement
§ 9:68	——Advisory Committee
§ 9:69	— —Constitutionality

D. VIRGINIA

§ 9:70 Release of employee's personal identifying information

CHAPTER 10. FOREIGN INTELLIGENCE SURVEILLANCE ACT, NATIONAL SECURITY LETTERS AND THE BANK SECRECY ACT

I. OVERVIEW

§ 10:1	Overview
§ 10:2	FISA and sovereign immunity
§ 10:3	Private sector immunity under FISA
§ 10:4	Clapper and Article III
§ 10:5	Metadata cases

II. FISA

A. ELECTRONIC SURVEILLANCE

§ 10:6 Key definitions

§	10:7	Electronic surveillance authorization without court order
§	10:8	Designation of judges
§	10:9	Court of review; record, transmittal to Supreme Court
§	10:10	Expeditious conduct of proceedings; security measures for maintenance of records
§	10:11	Tenure of judges
§	10:12	Jurisdiction and procedures for review of petitions
§	10:13	Stay of order
§	10:14	Establishment and transmittal of rules and procedures
§	10:15	Compliance with orders, rules, and procedures
§	10:16	Amicus curiae—Designation
§	10:17	—Qualifications
§	10:18	—Duties
§	10:19	—Assistance
§	10:20	—Access to information
§	10:21	—Notification
§	10:22	—Assistance of executive branch
§	10:23	—Administration
§	10:24	—Receipt of information
§	10:25	—Compensation
§	10:26	Review of FISA court decisions
§	10:27	Review of FISA court of review decisions
§	10:28	Applications for court orders—Submission by Federal officer; approval of Attorney General; contents
§	10:29	—Additional affidavits or certifications
§	10:30	—Additional information
§	10:31	—Personal review by Attorney General
§	10:32	Issuance of order—Necessary findings
§	10:33	—Determination of probable cause
Ş	10:34	—Specifications and directions of orders
Š	10:35	—Special directions for certain orders
Š	10:36	—Duration of order; extensions; review of
		circumstances under which information was acquired, retained or disseminated
§	10:37	—Emergency orders
§	10:38	—Emergencies involving non-United States persons
§	10:39	—Testing of electronic equipment; discovering
-		unauthorized electronic surveillance; training of intelligence personnel
§	10:40	—Retention of certifications, applications and orders
§	10:41	—Bar to legal action
_	10:42	—Pen registers and trap and trace devices

§ 10:43	Use of information—Compliance with minimization procedures; privileged communications; lawful
	purposes
§ 10:44	—Statement for disclosure
§ 10:45	—Notification by United States
§ 10:46	—Notification by States or political subdivisions
§ 10:47	—Motion to suppress
§ 10:48	—In camera and ex parte review by district court
§ 10:49	—Suppression of evidence; denial of motion
§ 10:50	—Finality of orders
§ 10:51	—Destruction of unintentionally acquired information
§ 10:52	—Notification of emergency employment of electronic surveillance; contents; postponement, suspension or elimination
§ 10:53	—Coordination with law enforcement on national security matters
§ 10:54	Report of electronic surveillance—Report to Administrative Office of the United States Court and to Congress
§ 10:55	Report of Attorney General to Congressional committees; limitation on authority or responsibility of information gathering activities of Congressional committees; report of Congressional committees to Congress
§ 10:56	Criminal sanctions
§ 10:57	Civil liability
§ 10:58	Authorization during time of war
§ 10:59	Statement of exclusive means by which electronic surveillance and interception of certain communications may be conducted
§ 10:60	Procedures for the retention of incidentally acquired communications—Requirement to adopt procedures
§ 10:61	—Coordination and approval
§ 10:62	—Application Procedures
§ 10:63	—Limitation on retention
B.	PHYSICAL SEARCHES
§ 10:64	Authorization of physical searches for foreign intelligence purposes
§ 10:65	Application for order; authorization
§ 10:66	Jurisdiction of Foreign Intelligence Surveillance Court
§ 10:67	Court of review; record; transmittal to Supreme Court
§ 10:68	Expeditious conduct of proceedings; security measures for maintenance of records

§	10:69	Application for order—Submission by Federal officer; approval of Attorney General; contents
8	10:70	—Additional affidavits or certifications
_	10:71	—Additional information
_	10:72	—Personal review by Attorney General
_	10:73	Issuance of order—Necessary findings
_	10:74	—Determination of probable cause
_	10:75	—Specifications and directions of orders
_	10:76	—Duration of order; extensions; assessment of
9	10.10	compliance
8	10:77	—Emergency orders
_	10:78	—Retention of applications and orders
_	10:79	Use of information—Compliance with minimization
Ð		procedures; lawful purposes
§	10:80	—Notice of search and identification of property
Ü		seized, altered, or reproduced
§	10:81	—Statement for disclosure
§	10:82	—Notification by United States
§	10:83	—Notification by States or political subdivisions
§	10:84	—Motion to suppress
§	10:85	—In camera and ex parte review by district court
§	10:86	—Suppression of evidence; denial of motion
8	10:87	—Finality of orders
Ş	10:88	—Notification of emergency execution of physical
Ü		search; contents; postponement, suspension, or elimination
2	10.00	
8	10:89	—Coordination with law enforcement on national
2	10.00	security matters
_	10:90	Congressional oversight
_	10:91	Prohibited activities
-	10:92	Civil liability
8	10:93	Authorization during time of war
	C.	PEN REGISTERS AND TRAP AND TRACE
		DEVICES FOR FOREIGN INTELLIGENCE
		PURPOSES
§	10:94	Application for authorization or approval of pen
ç	10.05	registers and trap and trace devices
-	10:95	Form of application; recipient
_	10:96	Executive approval; contents of application
_	10:97	Ex parte judicial order of approval
_	10:98	Time limitation
_	10:99	Cause of action barred
Š	10:100	Furnishing of results

§ 10:101	Privacy procedures
§ 10:102	Authorization during emergencies—Requirements for authorization
§ 10:103	—Determination of emergency and factual basis
§ 10:104	—Effect of absence of order
§ 10:105	—Privacy procedures
§ 10:106	Authorization during time of war
§ 10:107	Use of information
§ 10:108	Notification of intended disclosure by United States
§ 10:109	Notification of intended disclosure by State or political subdivision
§ 10:110	Motion to suppress
§ 10:111	In camera and ex parte review
§ 10:112	Effect of determination of lawfulness
§ 10:113	Binding final orders
§ 10:114	Congressional oversight
D.	ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS
§ 10:115	Application for order; conduct of investigation generally
§ 10:116	Recipient and contents of application
§ 10:117	Ex parte judicial order of approval
§ 10:118	Nondisclosure
§ 10:119	Liability for good faith disclosure; waiver
§ 10:120	Judicial review of FISA orders
§ 10:121	Minimization procedures
§ 10:122	Use of information
§ 10:123	Emergency authority for production of tangible things
§ 10:124	Compensation
§ 10:125	Congressional oversight
§ 10:126	Notification of changes to retention of call detail record policies
E.	OVERSIGHT
§ 10:127	Semiannual report of the Attorney General
§ 10:128	—Submissions to Congress
§ 10:129	—Protection of national security
§ 10:130	Declassification of significant decisions, orders, and opinions

§	10:131	Annual reports—Report by Director of the
		Administrative Office of the United States Courts
Š	10:132	—Mandatory reporting by Director of National Intelligence
8	10:133	—Timing
	10:134	Exceptions
	10:134	—Exceptions — —Certification
	10:136	Public reporting by persons subject to orders
8	10.150	Tubile reporting by persons subject to orders
	F.	ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES
		1. Procedures for targeting certain persons
		outside the United States other than United
		States persons
2	10.197	Authorization and limitations
_	10:137 10:138	Reporting of material breach
_	10:139	Congressional Review and Oversight of Abouts
8	10.159	Collection
8	10:140	Exception for emergency acquisitions
	10:141	Amicus amendments in 2017
_	10:142	Conduct of acquisition
_	10:143	Timing of determination
_	10:144	Construction
_	10:145	Targeting procedures
_	10:146	Minimization procedures
_	10:147	Queries—Procedures required
_	10:148	—Access to results of certain queries conducted by the FBI
8	10:149	Guidelines for compliance with limitations
	10:150	Certification
_	10:151	Directives and compensation
_	10:152	Release from liability
_	10:153	Challenging directives
8	10:154	Enforcement of directives
	10:155	Appeals
	10:156	Judicial review of certifications and procedures—
		Review by the FISC
§	10:157	—Orders
	10:158	—Appeal to the Court of Review
§	10:159	—Certiorari to the Supreme Court
§	10:160	—Reauthorization of authorizations in effect
§	10:161	-Reauthorization of orders, authorizations, and
		directives

§ 10:162 § 10:163	Judicial proceedings Maintenance and security of records and
	proceedings
§ 10:164	Assessments, reviews, and reporting—Semiannual assessment
§ 10:165 § 10:166	—Agency assessment —Annual review
8 10.100	2. Certain acquisitions inside the United States
	targeting United States persons outside the United States United States
§ 10:167	Jurisdiction of FISA court
\$ 10:168	Application and order
\$ 10:169	Review and limitations on review
§ 10:170	Directives
§ 10:171 § 10:172	Duration Emergency outhorization
§ 10.172 § 10:173	Emergency authorization Release from liability
§ 10.175 § 10:174	Appeal
§ 10:174	Construction
	3. Other acquisitions targeting United States persons outside the United States
§ 10:176	Jurisdiction and scope
§ 10:177	Orders by the FISC
§ 10:178	Emergency authorization
§ 10:179	Appeals
	4. Joint applications and concurrent applications
§ 10:180	Joint applications and orders
§ 10:181	Emergency authorization
	5. Use of information under this subchapter
§ 10:182	Use of information acquired under section 1881a
§ 10:183	Use of information acquired under section 1881b
	6. Congressional oversight
§ 10:184	Semiannual report
	7. Savings provisions
§ 10:185	Savings provision
G.	PROTECTION FOR PERSONS ASSISTING THE GOVERNMENT

§ 10:186 Procedures for implementing statutory defenses

§ 10:187	Preemption
§ 10:188	Reporting
§ 10:189	FISA rules of procedure
§ 10:190	—Scope of rules
§ 10:191	—Amendment
§ 10:192	—National security information
§ 10:193	—Structure
§ 10:194	—Authority of the judges
§ 10:195	—Means of requesting relief from the court
§ 10:196	——Filing applications, certifications, petitions,
	motions, or other papers
§ 10:197	——Service
§ 10:198	——Time and manner of submission of applications
§ 10:199	——Computation of time
§ 10:200	—Notice and briefing of novel issues
§ 10:201	—Submission of targeting and minimization
8 10.000	procedures
§ 10:202	—Correction of misstatement or omission; disclosure of noncompliance
§ 10:203	—Motion to amend court orders
§ 10.203 § 10:204	—Sequestration
§ 10.204 § 10:205	—Returns
§ 10.205 § 10:206	—Hearings
§ 10:200 § 10:207	—Court orders
§ 10.207 § 10:208	—Enforcement of order
§ 10:209	—Supplemental procedures for proceedings under 50
3 10.200	U.S.C. § 1881a(h)—Scope
§ 10:210	——Petition to modify or set aside a directive
§ 10:211	——Petition to compel compliance with a directive
§ 10:212	——Contents of petition
§ 10:213	——Response
§ 10:214	——Length of petition and response; other papers
§ 10:215	——Notification of presiding judge
§ 10:216	——Assignment
§ 10:217	——Review of petition to modify or set aside a
3 10.21.	directive
§ 10:218	——Review of petition to compel compliance
8	pursuant to 50 U.S.C.A. § 1881a(h)(5)(C)
§ 10:219	_
§ 10:220	
§ 10:221	—Supplemental procedures for proceedings under 50
 -	U.S.C. § 1861(f)—Scope
§ 10:222	——Petition challenging production or
J	nondisclosure order
§ 10:223	——Contents of petition
	•

Table of Contents

§ 10:224 ——Length of petition § 10:225 — — Request to stay production § 10:226 — — Notification of presiding judge § 10:227 ——Assignment § 10:228 — —Initial review § 10:229 ——Response to petition; other papers § 10:230 --- Rulings on nonfrivolous petitions ——Failure to comply § 10:231 § 10:232 ——In camera review — — Appeal § 10:233 -En banc proceedings-Standard for hearing or § 10:234 rehearing en banc § 10:235 — — Initial hearing en banc on request of a party § 10:236 ——Rehearing en banc on petition by a party — — Circulation of en banc petitions and responses § 10:237 — —Court-initiated en banc proceedings § 10:238 § 10:239 ——Polling § 10:240 ——Stay pending en banc review § 10:241 ——Supplemental briefing § 10:242 — Order granting or denying en banc review § 10:243 —Appeals—How taken § 10:244 --When taken ——Stay pending appeal § 10:245 § 10:246 — — Motion to transmit the record — —Transmitting the record § 10:247 § 10:248 — —Oral notification to the court of review —Administrative provisions—Duties of the clerk § 10:249 § 10:250 — Office hours ——Release of court records § 10:251 § 10:252 ——Practice before court

III. BANK SECRECY ACT

§ 10:253	Bank Secrecy Act—Reports on domestic coins and
	currency transactions
§ 10:254	Requirements placed upon the secretary
§ 10:255	Mandatory exemptions from reporting requirements
§ 10:256	Discretionary exemptions
§ 10:257	Records and reports on certain foreign transactions
§ 10:258	Reports on foreign currency transactions
§ 10:259	Reports on exporting and importing monetary instruments
§ 10:260	Search and forfeiture of monetary instruments
§ 10:261	Additional remedies
§ 10:262	Other powers of the Secretary

§ 10:263	Reporting of suspicious transactions
§ 10:264	Liability for disclosures
§ 10:265	Anti-money laundering programs
§ 10:266	Concentration accounts
§ 10:267	Private banking restrictions
§ 10:268	Prohibition on United States correspondent accounts with foreign shell banks
§ 10:269	Reporting of certain cross-border transmittals for funds
§ 10:270	Special restrictions in light of primary money laundering concerns
§ 10:271	Classified information
§ 10:272	Availability of reports and requests for injunctive relief
§ 10:273	Civil enforcement
§ 10:274	Negligent violations
§ 10:275	Criminal penalties
§ 10:276	Rewards for informants
§ 10:277	Restrictions on structuring transactions
§ 10:278	Identification requirements for the purchase of certain monetary instruments
§ 10:279	Records of certain domestic coin and currency transactions
§ 10:280	Customer reports
§ 10:281	Whistleblower protections
§ 10:282	Registration of money transmitting businesses
§ 10:283	Civil enforcement
§ 10:284	Reports relating to coins and currency received in nonfinancial trade or business
§ 10:285	Exceptions
§ 10:286	Bulk cash smuggling into or out of the United States
iv. ov	VERVIEW OF SURVEILLANCE IN THE

UNITED STATES

§ 10:287	Understanding the executive's authority
§ 10:288	Deconflicting presidential power
§ 10:289	The sources of the President's authority
§ 10:290	The Fourth Amendment and the history of domesti versus foreign intelligence and warrantless wiretaps
§ 10:291	The Fourth Amendment applied
§ 10:292	The Leon warrant exception and wiretap warrants
§ 10:293	Executive order 12333 and surveillance pre- and post-9/11

§ 10:294	The National Security Council and the Director of National Intelligence
§ 10:295	Duties of the intelligence community
§ 10:296	Conduct of intelligence activities
§ 10:297	Collection techniques
§ 10:298	Attorney General approval for the FBI
§ 10:299	Pre-9/11 surveillance by the NSA
§ 10:300	The President's surveillance program
§ 10:301	Presidential Policy Directive 28 (PPD-28)
§ 10:302	Electronic Communications Privacy Act (ECPA)
§ 10:303	Obtaining subscriber information
§ 10:304	Warshak and Section 2703(b)
§ 10:305	Section 2703(d) orders
§ 10:306	The Foreign Intelligence Surveillance Act—An overview
§ 10:307	What and who does FISA cover?
§ 10:308	Electronic surveillance under FISA
§ 10:309	FISA—Electronic surveillance authorization without court order
§ 10:310	—Surveillance with a court order
§ 10:311	FISA Section 215/50 U.S.C. Section 1861
§ 10:312	FISA Section 702/50 USC Section 1881a
§ 10:313	FISA Section 702 certification
§ 10:314	Recipients of directives and rights of challenge

CHAPTER 11. CONTROLLING THE ASSAULT OF NON-SOLICITED PORNOGRAPHY AND MARKETING ACT (CAN-SPAM)

· ·	·/
§ 11:1	Overview
§ 11:2	Defining an Internet access provider CAN-SPAM
§ 11:3	Primary purpose
§ 11:4	CAN-SPAM rules
§ 11:5	—Prohibition on charging a fee or placing other
	requirements on recipients who wish to opt out
§ 11:6	—Sexually oriented emails and labeling
§ 11:7	Defining senders of email
§ 11:8	Affiliate issues and defining a "sender"
§ 11:9	Affiliates and "intent" for "senders"
§ 11:10	Other vicarious liability holdings
§ 11:11	Purchase of leads and liability
§ 11:12	"Procuring" emails, conscious avoidance, and knowledge
§ 11:13	Header and subject line information

§	11:14	Use of other names in the header of an email
§	11:15	Requirements of commercial emails
§	11:16	What is "clear and conspicuous?"
§	11:17	Other labeling concerns
§	11:18	Adult-oriented emails
§	11:19	Liability for violation of adult labeling rule by affiliates
8	11:20	Opt-out requests
_	11:21	Role of affirmative consent
_	11:22	Actual harm requirement
_	11:23	Email a friend issues
-	11:24	No misrepresentation in emails
§	11:25	Spam as a defense to criminal charges
_	11:26	CAN-SPAM and mitigation defenses
_	11:27	Standing to sue and enforcement
§	11:28	Do-not-email list
§	11:29	Inapplicability of header restrictions to statements in
		body of email
§	11:30	Other vicarious liability issues
§	11:31	Mere advertising insufficient to establish liability
§	11:32	Registration of email accounts
§	11:33	Automated scripts
§	11:34	Restrictions upon wireless messaging
§	11:35	Form of authorization
§	11:36	Additional restrictions upon CMRS providers
§	11:37	Penalties and damages
§	11:38	Pleading CAN-SPAM violations with particularity
§	11:39	Assignment of claims
§	11:40	Preemption
§	11:41	Specificity requirements
§	11:42	Seeking out spam as a defense

CHAPTER 12. STATE E-MAIL LAWS

- § 12:1 Generally
- § 12:2 Apparent authority and emails

A. ALASKA

§ 12:3 Overview

B. ARIZONA

- § 12:4 Overview
- § 12:5 Damages and enforcement

C. ARKANSAS

§ 12:6 Overview

Table of Contents

§ 12:7	Damages and enforcement
§ 12:8	Additional electronic mail restrictions

D. CALIFORNIA

§ 12:9	Commercial email law
§ 12:10	—Prohibited conduct
§ 12:11	—Unlawful activities related to advertising
§ 12:12	—Persons permitted to bring and enforcement action for violation of Section 17529.5
§ 12:13	—Impact of the body of an email on header claims and allegedly misleading subject lines
§ 12:14	—Defining a bona fide ISP
§ 12:15	—Procuring an email under California law
§ 12:15.1	—Defining who is an advertiser and pleading requirements of state law
§ 12:16	—Remedies generally
§ 12:17	—E-mails sent pursuant to a preexisting or current business relationship
§ 12:18	—California's spam law and mitigation of damages
§ 12:19	—Falsified headers under California law
§ 12:20	—Preemption of commercial email laws
§ 12:21	Restrictions on text message advertisements
§ 12:22	Electronic mail service providers—Termination of electronic mail service
§ 12:23	—Policies regarding unsolicited electronic mail advertisements
§ 12:24	— —Enforcement
§ 12:25	—Restrictions on other laws
§ 12:26	Fraudulent misrepresentation under California law

E. COLORADO

- § 12:27 Spam law
- § 12:28 Civil immunity
- § 12:29 Immunity for transmission
- § 12:30 Application of law
- § 12:31 Legislative findings
- § 12:32 Electronic mail fraud
- § 12:33 Repeal of other laws
- § 12:34 Effective date
- § 12:35 Prior laws

F. CONNECTICUT

§ 12:36 Overview

- § 12:37 Damages and enforcement
- § 12:38 Do-not-email

G. DELAWARE

- § 12:39 Overview
- § 12:40 Damages and enforcement

H. FLORIDA

- § 12:41 Commercial email law
- § 12:42 Enforcement

I. GEORGIA

- § 12:43 Commercial email law
- § 12:44 Civil enforcement

J. IDAHO

- § 12:45 Overview
- § 12:46 Damages and enforcement

K. ILLINOIS

- § 12:47 Overview
- § 12:48 Damages and enforcement

L. INDIANA

- § 12:49 Overview
- § 12:50 Damages and enforcement

M. IOWA

- § 12:51 Transmission of unsolicited bulk electronic mail
- § 12:52 Sale or offer of direct sale of prescription drugs
- § 12:53 Use of encryption
- § 12:54 Civil relief and forfeiture

N. KANSAS

- § 12:55 Overview
- § 12:56 Damages and enforcement

O. LOUISIANA

- § 12:57 Offenses against electronic mail service providers
- § 12:58 Commercial emails

Table of Contents

§ 12:59 Civil enforcement

P. MAINE

- § 12:60 Overview
- § 12:61 Damages and enforcement

Q. MARYLAND

- § 12:62 Overview
- § 12:63 Damages and enforcement

R. MASSACHUSETTS

§ 12:64 Overview

S. MICHIGAN

- § 12:65 Overview
- § 12:66 Misuse of domain names
- § 12:67 Restrictions on software
- § 12:68 Immunity for service providers
- § 12:69 Enforcement
- § 12:70 Child protection registry
- § 12:71 Restrictions upon emails
- § 12:72 Restrictions upon disclosure of registry information
- § 12:73 Child registry law
- § 12:74 Forfeiture and enhancements
- § 12:75 Criminal enforcement
- § 12:76 Civil enforcement

T. MINNESOTA

- § 12:77 Overview
- § 12:78 Damages and enforcement

U. MISSOURI

- § 12:79 Overview
- § 12:80 Blocking by an interactive computer service
- § 12:81 Damages and enforcement

V. NEVADA

- § 12:82 Overview
- § 12:83 Damages and enforcement

W. NEW MEXICO

§ 12:84 Overview

§ 12:85 Damages and enforcement

X. NEW YORK

§ 12:86 Overview

Y. NORTH CAROLINA

- § 12:87 Overview
- § 12:88 Damages and enforcement
- § 12:89 Civil action

Z. NORTH DAKOTA

- § 12:90 Overview
- § 12:91 Immunity for interactive computer services
- § 12:92 Fraudulent or misleading communications
- § 12:93 Preemption
- § 12:94 Damages and enforcement

AA. OHIO

- § 12:95 Overview
- § 12:96 Damages and enforcement
- § 12:97 Liability under Ohio's law

BB. OKLAHOMA

- § 12:98 Overview
- § 12:99 Damages and enforcement

CC. OREGON

- § 12:100 Overview
- § 12:101 Damages and enforcement

DD. PENNSYLVANIA

- § 12:102 Overview
- § 12:103 Damages and enforcement

EE. RHODE ISLAND

- § 12:104 Overview
- § 12:105 Damages and enforcement

FF. SOUTH DAKOTA

§ 12:106 Spam law

lxiv

§ 12:107	Exemptions for ISPs
§ 12:108	Restrictions on collection of email addresses
§ 12:109	Collection of email addresses through automated means
§ 12:110	Civil enforcement
§ 12:111	Additional restrictions on spam
§ 12:112	Additional restrictions on commercial email
GG. T	ENNESSEE
§ 12:113	Overview
§ 12:114	Damages and enforcement
нн. т	EXAS
§ 12:115	Transmission of certain commercial electronic mail messages prohibited
§ 12:116	Requirement for transmission of unsolicited
	commercial electronic mail messages
§ 12:117	Selling or providing certain electronic mail addresses prohibited
§ 12:118	Transmission of message containing obscene material or material depicting sexual conduct; criminal penalty
§ 12:119	Violation of chapter: general civil penalty and injunctive relief
§ 12:120	Violation of chapter: deceptive trade practice
§ 12:121	Violation of chapter: civil action for damages
§ 12:122	Alternative recovery for persons other than electronic mail service providers
§ 12:123	Alternative recovery for electronic mail service providers
§ 12:124	Required notice of civil action to attorney general; civil penalty
§ 12:125	Intervention in civil action by attorney general
§ 12:126	Certification as class action prohibited
§ 12:127	Protection of secrecy or security
§ 12:128	Immunity from liability: commercial electronic mail message transmitted by error or accident
§ 12:129	Immunity from liability: telecommunications utilities and electronic mail service providers
§ 12:130	Qualified immunity from liability of senders
§ 12:131	Authority to block certain commercial electronic mail messages; qualified immunity

II. UTAH

§ 12:132 Child protection registry

§ 12:133 Criminal remedies

JJ. VIRGINIA

- § 12:134 Overview
- § 12:135 Damages and enforcement
- § 12:136 Constitutionality of Virginia's antispam law

KK. WASHINGTON

- § 12:137 Unpermitted or misleading electronic mail
- § 12:138 Enforcement
- § 12:139 Blocking of emails by an ISP
- § 12:140 Commercial electronic text message
- § 12:141 Violation of this law is a deceptive trade practice
- § 12:142 Enforcement and damages
- § 12:143 Preemption of Washington's spam law

LL. WEST VIRGINIA

- § 12:144 Overview
- § 12:145 Damages and enforcement

MM. WISCONSIN

§ 12:146 Overview

NN. WYOMING

- § 12:147 Overview
- § 12:148 Damages and enforcement

CHAPTER 13. SPYWARE AND PHISHING

I. OVERVIEW

- § 13:1 Introduction
- § 13:2 Spyware, phishing, and pharming defined
- § 13:3 Federal Trade Commission and spyware
- § 13:4 Spyware litigation
- § 13:5 Federal Deposit Insurance Corporation guidance on spyware

II. SPECIFIC STATE PROVISIONS

A. ALASKA

§ 13:6 Overview

lxvi

B. ARIZONA

§ 13:7 § 13:8 § 13:9 § 13:10 § 13:11 § 13:12	Modification of Internet settings Computer spyware—Generally prohibited activities Collection of personally identifiable information Blocking of software installation Taking control of another's computer Modifying settings			
§ 13:13	Inducing installation of software			
§ 13:14	Exemptions			
§ 13:15	Civil enforcement			
C.	ARKANSAS			
§ 13:16	Spyware			
§ 13:17	Prohibited conduct			
§ 13:18	Exceptions for ISPs and authorized software upgrades			
§ 13:19	Enforcement			
§ 13:20	Phishing			
§ 13:21	Spyware monitoring fund			
D.	CALIFORNIA			
§ 13:22	Consumer Protection Against Computer Spyware Act			
§ 13:23	Prevention of blocking of software installation			
§ 13:24	Other prohibited conduct			
§ 13:25	Anti-Phishing Act of 2005			
§ 13:26	Enforcement			
E.	GEORGIA			
§ 13:27	The Georgia Computer Security Act of 2005			
§ 13:28	Regulations on the installation of software			
§ 13:29	Modification of Internet settings			
§ 13:30	Preventing software blocks			
§ 13:31	Inducement of software installation			
§ 13:32	Criminal penalties for violations			
§ 13:33	Attorney General actions			
§ 13:34	Actions by ISPs			
§ 13:35	Exceptions to liability			
§ 13:36	Inapplicability to ISPs			
§ 13:37	Phishing			
§ 13:38	Exemptions from liability			

§ 13:39	Overview
G.	ILLINOIS
§ 13:40 § 13:41	Anti-Phishing Act Enforcement
Н.	INDIANA
§ 13:42	Prohibited conduct
§ 13:43	Gathering of personal information
§ 13:44	Blocking or disabling of software
§ 13:45	Taking control of a computer
§ 13:46	Modification of computer settings
§ 13:47	Inducing installation of software
§ 13:48	Exemptions
§ 13:49	Civil enforcement
I.	IOWA
§ 13:50	Overview of spyware statute
§ 13:51	= -
§ 13:52	Restrictions on collection of personally identifiable information
§ 13:53	Disabling or installing software
§ 13:54	Taking control of a computer
§ 13:55	Modifying Internet settings
§ 13:56	Other restrictions
§ 13:57	Exceptions for ISPs
§ 13:58	Criminal penalties
J.	LOUISIANA
§ 13:59	Spyware
K.	MARYLAND
§ 13:60	Phishing
L.	NEW HAMPSHIRE
§ 13:61	Spyware defined
§ 13:62	Taking control of a user's computer
§ 13:63	Modifying Internet settings
§ 13:64	Collection of personal information
§ 13:65	Blocking of software
lxviii	

F. HAWAII

Table of Contents § 13:66 Other violations § 13:67 Exemptions § 13:68 Enforcement M. NEW YORK § 13:69 Phishing § 13:70 Spyware and clickwrap TENNESSEE N. § 13:71 **Anti-Phishing Act** § 13:72 Unlawful conduct § 13:73 Civil enforcement § 13:74 Exemptions O. UTAH § 13:75 The Utah E-commerce Integrity Act § 13:76 Phishing and pharming § 13:77 Removal of domain name or content—Liability § 13:78 Application of law § 13:79 Preemption Prohibition on the use of software—Spyware § 13:80 § 13:81 Other prohibited conduct § 13:82 Exceptions § 13:83 Enforcement Ρ. WASHINGTON § 13:84 Antiphishing § 13:85 Spyware—Installation or removal of software § 13:86 —Collection of personally identifiable information

Volume 2

—Blocking installation or execution of software

CHAPTER 14. RESTRICTIONS ON TELEPHONES

—Misrepresenting software

ExemptionsCivil enforcement

I. OVERVIEW

§ 13:87

§ 13:88

§ 13:89

§ 13:90

§ 14:1 Telephone regulation introduction

II. FEDERAL LAWS

§ 14:2	Telecommunications Act of 1996
§ 14:3	Confidentiality of carrier information
§ 14:4	Customer proprietary network information
§ 14:5	Exceptions to privacy restrictions
§ 14:6	Disclosure of subscriber list information
§ 14:7	Wireless location information
§ 14:8	Disclosure of information in connection with emergency services
§ 14:9	Private right of action under the Telecommunications Act of 1996
§ 14:10	Telephone record regulations
§ 14:11	Use of customer proprietary network information without customer approval
§ 14:12	Approval required for use of customer proprietary network information
§ 14:13	Use of opt-out and opt-in approval process
§ 14:14	Notice for use of customer proprietary network information
§ 14:15	Notice requirements for opt outs
§ 14:16	Additional burdens on email notice
§ 14:17	Notice requirements for opt-in requests
§ 14:18	Notice requirements for one-time use of CPNI
§ 14:19	Safeguards on use of CPNI
§ 14:20	Compliance statements
§ 14:21	Notices to the commission regarding opt outs
§ 14:22	Safeguards on the disclosure of CPNI—Password requirements
§ 14:23	—General requirements
§ 14:24	—Telephone access
§ 14:25	—Online access
§ 14:26	—In-store access
§ 14:27	—Notification of account changes
\$ 14:28	—Business customer exception
§ 14:29	Notification of CPNI security breaches
§ 14:30	—What is a breach?
§ 14:31	-Notice requirements
§ 14:32	—Preemption
§ 14:33	Federal Do-Not-Call law
§ 14:34	Exception for the Health Insurance Portability and Accountability Act (HIPAA)
§ 14:35	TCPA and Pharmacy Benefit Managers
§ 14:36	Federal Do-Not-Call law—Defenses
§ 14:37	—Calling times

§ 14:38	—Required disclosures
§ 14:39	— — Charitable solicitations
§ 14:40	——Recordkeeping requirements
§ 14:41	TCPA's application to SMS
§ 14:42	Text messaging and stop message
§ 14:43	When are faxes advertisements
§ 14:44	Auto-dialer and facsimile restrictions
§ 14:45	Auto-dialer litigation
§ 14:46	Artificial or prerecorded messages
§ 14:47	Improper initiation of telephone solicitations
§ 14:48	Exemptions
§ 14:49	Additional requirements
§ 14:50	Additional auto-dialer issues
§ 14:51	TCPA and debt collection
§ 14:52	TCPA and providing phone numbers
§ 14:53	FCC TCPA Declaratory Ruling and Order in 2015
§ 14:54	—Consent—A summary
§ 14:55	—What is an auto-dialer
§ 14:56	—Who initiates or makes a "call"
§ 14:57	—Application of the Autodialer ruling
§ 14:58	—Application to SMS
§ 14:59	—Application to internet-to-phone text messages
§ 14:60	—Exemption of certain proconsumer messages
§ 14:61	In the Matter of AT&T Services, Inc.
§ 14:62	Federal Do-Not-Fax law
§ 14:63	Do-Not-Fax—The established business relationship in
	the business context
§ 14:64	Federal Do-Not-Fax law—Opt-outs
§ 14:65	Application to efaxes
§ 14:66	Faxes promoting job placement services are
	advertisements
§ 14:67	Auto-dialers and established business relationship
§ 14:68	TCPA and commercial definition
§ 14:69	Communications Assistance for Law Enforcement Act
0 1 4 50	and broadband access and VoIP
§ 14:70	Slamming
§ 14:71	Instant messaging and SMS technology
§ 14:72	Secondary liability
§ 14:73	Vicarious liability for lead generation and the TCPA
§ 14:74	Revocation of consent under TCPA
§ 14:75	TCPA and broadcasts
§ 14:76	Smartphones and the TCPA

III. STATE SPECIFIC LAWS

A. CALIFORNIA

§ 14:77 Do-Not-Call law

14:78	Telephone solicitor law					
14:79	Exceptions					
14:80	Exception for express written permission					
14:81	Sale of lists					
14:82	Enforcement					
14:83	Solicitation of sales through the mail					
14:84	Civil enforcement					
14:85	Telephonic seller law—Defining a "telephonic seller'					
14:86	—Burden of proof					
14:87	—Requirements for telephonic sellers					
14:88	—Contents of filings					
14:89	—Filings related to exemptions					
14:90	—Disclosures regarding loans					
14:91	—Additional requirements					
	—Irrevocable consent					
14:93	—No representations					
14:94	—Soliciting prospective purchasers on behalf of					
	unregistered telephonic sellers					
14:95	—Enforcement					
14:96	—Bond requirement					
14:97	Restrictions on telephone, Internet, mail order, or					
	catalog sales or leases					
14:98	—Requirements of open-end credit plans					
14:99	—Other restrictions					
14:100	—Exceptions					
14:101	Do-Not-Fax law					
14:102	—Preemption					
В.	COLORADO					
14.103	Telecommunications crime					
	—Civil enforcement					
	Unlawful use of information					
	Telephone lines and hostage situations					
	Automated dialing systems					
C.	CONNECTICUT					
14:108	Do-not-fax					
D.	GEORGIA					
14.100	Telephone records privacy protection act					
	Restrictions on telecommunications companies					
14.111	Directory restrictions					
	14:79 14:80 14:81 14:82 14:83 14:84 14:85 14:86 14:87 14:88 14:90 14:91 14:92 14:93 14:94 14:95 14:96 14:97 14:100 14:101 14:102 B. 14:103 14:104 14:105 14:106 14:107 C. 14:108					

lxxii

Table of Contents

E. NEW MEXICO

- § 14:112 Telephone laws
 - F. PENNSYLVANIA
- § 14:113 Publication of cell phone numbers
 - G. WASHINGTON
- § 14:114 Disclosure of cell phone numbers

CHAPTER 15. PRETEXTING

I. OVERVIEW

- § 15:1 Pretexting—In general
- § 15:2 Attorney liability for pretexting
- § 15:3 New regulations regarding pretexting
- § 15:4 Telephone Records and Privacy Act
- § 15:5 —Obtaining telephone records
- § 15:6 —Prohibitions on sales or transfers of records
- § 15:7 —Prohibition on purchase or receipt of confidential phone records
- § 15:8 —Enhanced penalties
- § 15:9 —Exceptions

II. STATE PRETEXTING RESTRICTIONS

A. CALIFORNIA

- § 15:10 Restrictions on pretexting
- § 15:11 Enforcement
- § 15:12 Exclusion from evidence
- § 15:13 Employer liability

B. FLORIDA

- § 15:14 Pretexting of telephone records
- § 15:15 Exemptions

C. GEORGIA

- § 15:16 Restrictions on release of telephone records
- § 15:17 Restrictions upon private investigators

D. ILLINOIS

§ 15:18 Pretexting

	§	15:19	Civil	remedies	for	pretexting
--	---	-------	-------	----------	-----	------------

E. MARYLAND

- § 15:20 Telephone Privacy Act of 2006
- § 15:21 Pretexting prohibitions
- § 15:22 Exemptions
- § 15:23 Criminal enforcement
- § 15:24 Civil enforcement

F. MICHIGAN

- § 15:25 Pretexting of telephone records
 - G. MONTANA
- § 15:26 Pretexting

H. NEW YORK

- § 15:27 Consumer communication records privacy act
- § 15:28 Pretexting of financial information
- § 15:29 Unauthorized disclosures by officers or employees

I. NORTH CAROLINA

- § 15:30 Pretexting
- § 15:31 Exceptions
- § 15:32 Enforcement

CHAPTER 16. FINANCIAL PRIVACY

I. INTRODUCTION

§ 16:1 Financial privacy and security in general

II. GRAMM-LEACH-BLILEY ACT

- § 16:2 Application in general
- § 16:3 Statutory requirements of GLB
- § 16:4 Financial privacy rule
- § 16:5 Privacy of Consumer Financial Information
- § 16:6 Model privacy form and examples
- § 16:7 Initial privacy notice
- § 16:8 Annual privacy notice
- § 16:9 Information to be included in privacy notices
- § 16:10 Short-form initial notice with opt-out notice for noncustomers

lxxiv

0 10 11	
§ 16:11	Form of opt-out notice to consumers; opt-out methods
§ 16:12	Joint relationships
§ 16:13	Revised privacy notices
§ 16:14	Delivering privacy and opt-out notices
§ 16:15	Retention or accessibility of notices for customers
§ 16:16	Limits on disclosure of nonpublic personal
	information to nonaffiliated third parties
§ 16:17	Limits on redisclosure and reuse of information
§ 16:18	Exception to opt-out requirements for service providers and joint marketing
§ 16:19	Exceptions to notice and opt-out requirements for
	processing and servicing transactions
§ 16:20	Other exceptions to notice and opt-out requirements
§ 16:21	Protection of FCRA
§ 16:22	Relation to State laws
§ 16:23	Model forms
§ 16:24	Federal Financial Institutions Examinations Council requirements
§ 16:25	Security provisions
§ 16:26	GLB and government disclosures
§ 16:27	Pretexting provisions
§ 16:28	Disclosure of class action discovery under GLB
§ 16:29	The interplay of GLB and FCRA
0.10.00	
§ 16:30	The FCRA and the First Amendment
	The FCRA and the First Amendment AIR CREDIT REPORTING ACT
III. FA	
III. FA	AIR CREDIT REPORTING ACT Overview of FCRA
III. FA § 16:31 § 16:32	AIR CREDIT REPORTING ACT Overview of FCRA Misuse of credit reports and jurisdiction
III. FA	AIR CREDIT REPORTING ACT Overview of FCRA Misuse of credit reports and jurisdiction What do credit reporting agencies do?
III. FA § 16:31 § 16:32 § 16:33 § 16:34	Overview of FCRA Misuse of credit reports and jurisdiction What do credit reporting agencies do? FCRA inapplicable to independent contractors
\$ 16:31 \$ 16:32 \$ 16:33 \$ 16:34 \$ 16:35	AIR CREDIT REPORTING ACT Overview of FCRA Misuse of credit reports and jurisdiction What do credit reporting agencies do?
III. FA § 16:31 § 16:32 § 16:33 § 16:34	Overview of FCRA Misuse of credit reports and jurisdiction What do credit reporting agencies do? FCRA inapplicable to independent contractors Furnishing of consumer reports
\$ 16:31 \$ 16:32 \$ 16:33 \$ 16:34 \$ 16:35 \$ 16:36	AIR CREDIT REPORTING ACT Overview of FCRA Misuse of credit reports and jurisdiction What do credit reporting agencies do? FCRA inapplicable to independent contractors Furnishing of consumer reports Protection of medical information
\$ 16:31 \$ 16:32 \$ 16:33 \$ 16:34 \$ 16:35 \$ 16:36 \$ 16:37	AIR CREDIT REPORTING ACT Overview of FCRA Misuse of credit reports and jurisdiction What do credit reporting agencies do? FCRA inapplicable to independent contractors Furnishing of consumer reports Protection of medical information Disclosures to governmental entities
\$ 16:31 \$ 16:32 \$ 16:33 \$ 16:34 \$ 16:35 \$ 16:36 \$ 16:37 \$ 16:38	Overview of FCRA Misuse of credit reports and jurisdiction What do credit reporting agencies do? FCRA inapplicable to independent contractors Furnishing of consumer reports Protection of medical information Disclosures to governmental entities Disclosures to consumers Disclosures to governmental agencies for
\$ 16:31 \$ 16:32 \$ 16:32 \$ 16:33 \$ 16:34 \$ 16:35 \$ 16:36 \$ 16:37 \$ 16:38 \$ 16:39 \$ 16:40 \$ 16:41	Overview of FCRA Misuse of credit reports and jurisdiction What do credit reporting agencies do? FCRA inapplicable to independent contractors Furnishing of consumer reports Protection of medical information Disclosures to governmental entities Disclosures to consumers Disclosures to governmental agencies for counterterrorism purposes
\$ 16:31 \$ 16:32 \$ 16:33 \$ 16:34 \$ 16:35 \$ 16:36 \$ 16:37 \$ 16:38 \$ 16:39	Overview of FCRA Misuse of credit reports and jurisdiction What do credit reporting agencies do? FCRA inapplicable to independent contractors Furnishing of consumer reports Protection of medical information Disclosures to governmental entities Disclosures to consumers Disclosures to governmental agencies for counterterrorism purposes Disclosure to the FBI
\$ 16:31 \$ 16:32 \$ 16:32 \$ 16:33 \$ 16:34 \$ 16:35 \$ 16:36 \$ 16:37 \$ 16:38 \$ 16:39 \$ 16:40 \$ 16:41	Overview of FCRA Misuse of credit reports and jurisdiction What do credit reporting agencies do? FCRA inapplicable to independent contractors Furnishing of consumer reports Protection of medical information Disclosures to governmental entities Disclosures to consumers Disclosures to governmental agencies for counterterrorism purposes Disclosure to the FBI Affiliate sharing Exclusions for individuals reporting "first hand"
\$ 16:31 \$ 16:32 \$ 16:32 \$ 16:33 \$ 16:34 \$ 16:35 \$ 16:36 \$ 16:37 \$ 16:38 \$ 16:39 \$ 16:40 \$ 16:41 \$ 16:42	Overview of FCRA Misuse of credit reports and jurisdiction What do credit reporting agencies do? FCRA inapplicable to independent contractors Furnishing of consumer reports Protection of medical information Disclosures to governmental entities Disclosures to consumers Disclosures to governmental agencies for counterterrorism purposes Disclosure to the FBI Affiliate sharing Exclusions for individuals reporting "first hand" experience
\$ 16:31 \$ 16:32 \$ 16:33 \$ 16:34 \$ 16:35 \$ 16:36 \$ 16:37 \$ 16:38 \$ 16:39 \$ 16:40 \$ 16:41 \$ 16:42 \$ 16:43	Overview of FCRA Misuse of credit reports and jurisdiction What do credit reporting agencies do? FCRA inapplicable to independent contractors Furnishing of consumer reports Protection of medical information Disclosures to governmental entities Disclosures to consumers Disclosures to governmental agencies for counterterrorism purposes Disclosure to the FBI Affiliate sharing Exclusions for individuals reporting "first hand" experience Defining what a "offer of credit is under FCRA"

§ 16:47	Civil liability
§ 16:48	FCRA and litigation
§ 16:49	Being deterred from credit is not damage under the FCRA
§ 16:50	FCRA and online services
§ 16:51	Liability for dissemination of truthful information
§ 16:52	Recovery of emotional distress under the FCRA
§ 16:53	The FCRA and accurate reporting defenses under section 1681i(1)(a)
§ 16:54	Expert testimony regarding violations of the FCRA
§ 16:55	Regulations regarding medical information
§ 16:56	FACT Act rules on affiliate marketing
§ 16:57	—Defining a "pre-existing" relationship
§ 16:58	—Initial notice and opt-out requirements
§ 16:59	—Who can provide notice
§ 16:60	—Use of eligibility information from an affiliate
§ 16:61	—Use of eligibility information by a service provider
§ 16:62	—Writing requirements
§ 16:63	—Exceptions to eligibility information regulations
§ 16:64	—Scope and duration of opt out
§ 16:65	—Notice following termination of all continuing
	relationships
§ 16:66	—Contents of an opt-out notice
§ 16:67	—Reasonable opportunity to opt out
§ 16:68	—Reasonable and simple methods of opting out
§ 16:69	—Delivery of opt-out notices
§ 16:70	—Renewal of opt out
§ 16:71	—Timing of renewal notice
§ 16:72	—Effective date
§ 16:73	FACT Act regulations regarding address discrepancies
§ 16:74	FACT Act and red flag regulations
§ 16:75	Periodic identification of covered accounts
§ 16:76	Establish an identity theft prevention program
§ 16:77	Administration of the program
§ 16:78	Effective date
§ 16:79	The role of the guidelines in Appendix J
§ 16:80	Regulations on card issuers regarding changes of address
§ 16:81	Form of notice
§ 16:82	Regulations regarding medical information—Office of comptroller of currency regulations
§ 16:83	—Other FCRA regulations
§ 16:84	Administrative enforcement
§ 16:85	FCRA and preemption of state law claims

Table of Contents

§ 16:86	Regulation S-P
§ 16:87	FCRA preemption and mortgage-trigger lists

IV. RIGHT TO FINANCIAL PRIVACY

§ 16:88	General restrictions
§ 16:89	Exceptions permitting disclosure
§ 16:90	Nonidentifiable information and other exceptions
§ 16:91	Challenges by customers to disclosures
§ 16:92	Inapplicability of notice requirements when limited information is sought
§ 16:93	e

CHAPTER 17. STATE FINANCIAL PRIVACY LAWS

I. INTRODUCTION

- § 17:1 State financial privacy laws, generally§ 17:2 Understanding State FCRA and Investigative
 - 17:2 Understanding State FCRA and Investigative Consumer Reporting Agency (ICRA) laws

II. STATE PRIVACY LAWS

A. ALABAMA

§ 17:3 Tax payor privilege

B. ARKANSAS

§ 17:4 Privacy of account information

C. CALIFORNIA

§ 17:5	Financial Information Privacy Act
§ 17:6	—Disclosures to nonaffiliated third parties
§ 17:7	—Disclosures to affiliates
§ 17:8	—Additional permitted disclosures
§ 17:9	—Remedies
§ 17:10	Consumer credit reports—Inspection rights
§ 17:11	—Exemptions
§ 17:12	—Furnishing consumer reports
§ 17:13	—Notification system
§ 17:14	—Reports to government agencies
§ 17:15	—Restrictions on certain forms of information
§ 17:16	—Open-end credit account
§ 17:17	—Medical information

\$ 17:18 \$ 17:19 \$ 17:20 \$ 17:21 \$ 17:22 \$ 17:23 \$ 17:24 \$ 17:25	 Child and spousal support information Documents acting as liens or encumbrances Procedures Accuracy Restrictions on nondisclosure requirements Notices to suppliers of information Supplying files and information Credit scores and key factors
§ 17:26	—Credit scoring model
§ 17:27	—Fees
§ 17:28	—Statement of rights
§ 17:29	—Removal of names from credit card solicitation lists
§ 17:30	—Disputes regarding accuracy
§ 17:31	—Submission of police report
§ 17:32	—Waiver of disclosures of credit scores
§ 17:33	—Deletion of inquiries with respect to identity theft
§ 17:34	—Sale of consumer debt to debt collector
§ 17:35	—Consumer reporting agencies as resellers
§ 17:36	—Fees
§ 17:37	—Matters of public record
§ 17:38 § 17:39	—Civil penalties
8 17:59	—Procedures to prevent use of data for marketing purposes
§ 17:40	Investigative consumer reports
§ 17:41	—Availability of report to consumer
§ 17:42	—Furnishing consumer reports
§ 17:43	—Reports to government agencies
§ 17:44	—Procurement or preparation of report
§ 17:45	-Exceptions
§ 17:46	—Prohibited information
§ 17:47	—Verification of information
§ 17:48	—Restrictions on personal interviews
§ 17:49	—Reporting and other procedures
§ 17:50	—Notice provided by investigative consumer
	reporting agency
§ 17:51	—Supplying files and information
§ 17:52	—Disputes regarding accuracy and completeness of
	files
§ 17:53	—Termination of reinvestigation
§ 17:54	—Rectification
§ 17:55	—Additional requirements on consumer reporting
0 4 2 2 2	agencies under the FCRA
§ 17:56	—Fees
§ 17:57	—Public records
§ 17:58	—Notice of adverse action regarding insurance

lxxviii

§ 17:59	—Subsequent reports
D.	CONNECTICUT
\$ 17:60 \$ 17:61 \$ 17:62 \$ 17:63 \$ 17:64 \$ 17:65	Banking law of Connecticut Disclosure for audits and tax reporting Disclosures pursuant to a warrant Other exceptions Enforcement Compliance with GLB
E.	DELAWARE
§ 17:66	Right to file a police report regarding identity theft
F.	GEORGIA
§ 17:67	Tax information
G.	HAWAII
§ 17:68 § 17:69	Employer's use of credit history Employer inquiries into conviction record
H.	ILLINOIS
\$ 17:70 \$ 17:71 \$ 17:72 \$ 17:73 \$ 17:74 \$ 17:75 \$ 17:76	
I.	KANSAS
§ 17:77	Payment card scanning
J.	LOUISIANA
\$ 17:78 \$ 17:79 \$ 17:80 \$ 17:81 \$ 17:82 \$ 17:83 \$ 17:84	Disclosure of reports Fees Procedures Disputes regarding accuracy of information Copy of report after denial of credit Records of recipients Enforcement
§ 17:85	Dissemination of specific credit information

§	17:86 17:87	Disclosure of financial information Disclosures by banks
-	17:88	Disclosure due to authorization
_	17:89	Authorized disclosures
8	17:90	Exemption from liability
	K.	MARYLAND
§	17:91	Employer's use of credit information
§	17:92	Enforcement
§	17:93	Exceptions
§	17:94	Effective date
	L.	MASSACHUSETTS
Ş	17:95	Restrictions on consumer reports
§	17:96	Consumer's decision to exclude name from consumer reporting agency list
§	17:97	Notification systems
§	17:98	Use of consumer reports in certain credit transactions
§	17:99	Information that cannot be placed in a report
Š	17:100	Child support issues
§	17:101	Investigative consumer reports
§	17:102	Procedures to be maintained by consumer reporting agencies
§	17:103	Procedures to ensure accuracy of information reported to consumer reporting agencies
§	17:104	Disputed information
_	17:105	Notice of closure of certain accounts
§	17:106	Furnishing of information regarding delinquent accounts
§	17:107	Liability for violations of furnishing of certain information
§	17:108	Furnishing of information to governmental agencies
§	17:109	Disclosures to consumers
§	17:110	Procedures for disclosures
§	17:111	Action related to procedures for disclosures
§	17:112	Completeness or accuracy of information
§	17:113	Charges for disclosures
§	17:114	Reports for employment purposes
§	17:115	Procedures for accurate reporting of public record information
§	17:116	Adverse information
	17:117	Denial of credit or employment
	17:118	Pretexting
		=

lxxx

§ 17:119	Introducing false information into a reporting agency's files
3 17:120	Providing unauthorized access
3 17:121	Enforcement
3 17:122	Restrictions on credit services organizations
§ 17:123	Required disclosures to buyers of credit services
3 17:124	Requirements for contracts between a buyer and a credit services organization
3 17:125	Liability for violation of credit services restrictions
3 17:126	Employment restrictions
§ 17:127	Enforcement
M.	MINNESOTA
3 17:128	Access to consumer reports
3 17:129	Restrictions on the sale of certain information
§ 17:130	Disclosure and use of consumer reports for employment purposes
§ 17:131	Exceptions
§ 17:132	Notice of adverse action
N.	NEW MEXICO
3 17:133	Disclosure of information to the public
§ 17:134	Correction to consumer bureau's reports
3 17:135	Disclosure of information to governmental entities
3 17:136	Disclosure of information to businesses, professions and individuals
3 17:137	Personnel reporting
3 17:138	Limitations on information reports
3 17:139	Civil enforcement
§ 17:140	Criminal enforcement
O.	NEW YORK
3 17:141	Disclosure of reports
3 17:142	Investigative consumer reports
3 17:143	Disclosures to consumers
3 17:144	Exception regarding disclosures
§ 17:145	Form and conditions of disclosure
§ 17:146	Procedures for resolving disputes
3 17:147	Public record information
3 17:148	Restrictions on investigative consumer reports
17:149	Requirements on users of consumer reports
17:150	Prohibited information
17:151	Compliance procedures

§ 17:152	Theft of identity
§ 17:153	Civil enforcement for willful noncompliance
§ 17:154	Civil enforcement for negligent noncompliance
§ 17:155	Limitations period
§ 17:156	Obtaining or introducing information under false pretenses
§ 17:157	Unauthorized disclosures by officers or employees
§ 17:158	
§ 17:159	Disclosures to government agencies
Р.	OREGON
§ 17:160	Employer's use of credit information
§ 17:161	Enforcement
§ 17:162	Regulation on credit history
§ 17:163	Enforcement
Q.	SOUTH CAROLINA
§ 17:164	Financial privacy
§ 17:165	Corrections to consumer reports
R.	TEXAS
§ 17:166	Permissible purposes for the furnishing of consumer reports
§ 17:167	Disclosure to the consumer by the user of a consumer report
§ 17:168	Use of Social Security numbers
§ 17:169	Disclosures by check verification services
§ 17:170	Disclosures by consumer reporting agencies
§ 17:171	Prohibited information
§ 17:172	Exceptions to prohibited information
§ 17:173	Medical information
§ 17:174	Dispute procedure
§ 17:175	Frivolous disputes
§ 17:176	Deletion of information that cannot be verified
§ 17:177	Procedures governing reinsertion of deleted information
§ 17:178	Correction of inaccurate information
§ 17:179	Consumer's right to file action in court or arbitrate
£ 17.100	disputes
§ 17:180	Arbitration actions
§ 17:181	Civil liability
§ 17:182	Enforcement by the Attorney General
§ 17:183	Deceptive trade practice

lxxxii

- § 17:184 Venue
 - S. WASHINGTON
- § 17:185 Use of consumer reports

CHAPTER 18. SECURITY FREEZE LAWS

§ 18:1 Credit freezes generally

A. ALASKA

- § 18:2 Security freeze
- § 18:3 Timing of freeze
- § 18:4 Effect of freeze
- § 18:5 Changes to information
- § 18:6 Removal of freeze
- § 18:7 Fees
- § 18:8 Notices
- § 18:9 Notice of violation
- § 18:10 Resellers
- § 18:11 Exemptions
- § 18:12 Enforcement

B. ARIZONA

- § 18:13 Security freeze
- § 18:14 Timing of freeze
- § 18:15 Lifting of freeze
- § 18:16 Fees
- § 18:17 Changes to certain information
- § 18:18 Exceptions
- § 18:19 Enforcement
- § 18:20 Effective date
- § 18:21 Liability

C. ARKANSAS

- § 18:22 Legislation
- § 18:23 Placement of a security freeze
- § 18:24 Access to consumer reports
- § 18:25 Removal of a security freeze
- § 18:26 Effect of a security freeze
- § 18:27 Consumer request for removal of a security freeze
- § 18:28 Exceptions
- § 18:29 Fees
- § 18:30 Changes to certain information

lxxxiii

Exemptions from placing a security freeze § 18:31 § 18:32 Notice § 18:33 Civil remedies § 18:34 Effective date D. CALIFORNIA § 18:35 Security alerts -Effect § 18:36 § 18:37 -Penalties § 18:38 Placement by consumer Timing of freeze § 18:39 Lifting of freeze § 18:40 § 18:41 Development of procedures § 18:42 **Effect** § 18:43 Exemptions § 18:44 Fees § 18:45 Changes to consumer credit report § 18:46 Resellers of information § 18:47 Exemptions from placing security alerts or security freezes § 18:48 Disclosure of public record information § 18:49 Unconstitutionality of California's security freeze law COLORADO Ε. § 18:50 Credit freeze § 18:51 Timing of freeze § 18:52 Changes to certain information § 18:53 Lifting of freeze § 18:54 Development of contact methods § 18:55 Exceptions § 18:56 Fees § 18:57 Notice F. CONNECTICUT

G. DELAWARE

Fees

Exceptions

Credit freeze

Timing of freeze

Lifting of a freeze

Development of procedures

§ 18:64 Credit freeze

lxxxiv

§ 18:58

§ 18:59

§ 18:60

§ 18:61

§ 18:62

§ 18:63

Table of Contents

§ 18:65 Security freeze § 18:66 Timing of freeze § 18:67 Lifting of freeze § 18:68 Development of procedures § 18:69 Effect of freeze § 18:70 Exceptions § 18:71 Fees § 18:72 Notices § 18:73 Enforcement

H. FLORIDA

- § 18:74 Security freeze
- § 18:75 Effect of freeze
- § 18:76 Development of procedures
- § 18:77 Timing of freeze
- § 18:78 Lifting of freeze
- § 18:79 Other disclosures
- § 18:80 Exceptions
- § 18:81 Fees
- § 18:82 Changes to information
- § 18:83 Enforcement
- § 18:84 Notices

I. GEORGIA

- § 18:85 Security freeze
- § 18:86 Effect of freeze
- § 18:87 Timing of freeze
- § 18:88 Lifting of freeze
- § 18:89 Exemptions
- § 18:90 Changes to information
- § 18:91 Fees
- § 18:92 Enforcement
- § 18:93 Notice requirement

J. HAWAII

- § 18:94 Security freeze § 18:95 Effect of freeze
- \$ 10.00 Time in a f.f.
- § 18:96 Timing of freeze § 18:97 Development of procedures
- § 18:98 Exceptions
- § 18:99 Duties of a consumer reporting agency
- § 18:100 Fees
- § 18:101 Enforcement

K. IDAHO

§ 18:102	Security freeze
§ 18:103	Effect of security freeze
§ 18:104	Development of contact methods
§ 18:105	Removal of a security freeze
§ 18:106	Exceptions
§ 18:107	Fees
§ 18:108	Changes to certain forms of information
§ 18:109	Enforcement

L. ILLINOIS

§ 18:110	Security freeze
§ 18:111	Timing of freeze
§ 18:112	Lifting
§ 18:113	Development of contact methods
§ 18:114	Effect of security freeze
§ 18:115	Exemptions
§ 18:116	Fees
§ 18:117	Changes to information
§ 18:118	Exemptions
§ 18:119	Enforcement

M. INDIANA

§ 18:120	Placement of a security freeze
§ 18:121	Development of procedures
§ 18:122	Timing of freeze
§ 18:123	Removal of security freezes
§ 18:124	Additional procedures for release of freezes
§ 18:125	Requests by third parties
§ 18:126	Length of freeze
§ 18:127	Restrictions on removal of security freezes
§ 18:128	Permitted disclosures
§ 18:129	Exemptions from placing a security freeze
§ 18:130	Changes to information
§ 18:131	Notices to consumers
§ 18:132	Fees
§ 18:133	Civil enforcement

N. IOWA

§ 18:134 Security freeze§ 18:135 Timing of freeze§ 18:136 Temporary lift freeze

lxxxvi

§ 18:137	Removal of freeze
§ 18:138	Fees
§ 18:139	Effect of freeze
§ 18:140	Exceptions
§ 18:141	Changes to certain information
§ 18:142	Waiver
§ 18:143	Enforcement

O. KANSAS

§ 18:144	Security freeze
§ 18:145	Timing of freeze
§ 18:146	Provision of unique ID
§ 18:147	Effect of freeze
§ 18:148	Lifting of freeze
§ 18:149	Duration of a freeze
§ 18:150	Nonapplicability of freeze
§ 18:151	Exemptions
§ 18:152	Fees
§ 18:153	Changes to certain information
§ 18:154	Civil remedies

P. KENTUCKY

§ 18:155	Placement of a security freeze
§ 18:156	Timing of freeze
§ 18:157	Effect
§ 18:158	Entities exempt from placing freezes
§ 18:159	Personal identification numbers and disclosure of
	process
§ 18:160	Requests for information when a security freeze is
	in place
§ 18:161	Lifting of freeze
§ 18:162	Length
§ 18:163	Disclosure of information during security freeze
§ 18:164	Fees
§ 18:165	Changes to information
8 18.166	Civil remedies

Q. LOUISIANA

§ 18:167	Security alert
§ 18:168	Toll-free number
§ 18:169	Exemptions
§ 18:170	Placing
§ 18:171	Notice

§ 18:172 Effect § 18:173 Lifting of freeze § 18:174 Inapplicability § 18:175 Fees § 18:176 Changes to information § 18:177 Enforcement § 18:178 Limitations on use of consumer's credit report

R. MARYLAND

- § 18:179 Security freeze § 18:180 Timing of freeze § 18:181 Exceptions § 18:182 Temporary lifting of security freezes § 18:183 Lifting of freeze § 18:184 Effect of freeze § 18:185 Length of freeze § 18:186 Fees § 18:187 Other notices
- Notification of release of information § 18:188
- § 18:189 Enforcement
- § 18:190 Protected consumers

MASSACHUSETTS

- § 18:191 Security freezes—Consumer requests
- Timing and lifting of freezes § 18:192
- Changes to information § 18:193
- § 18:194 Exemptions
- § 18:195 Fees
- § 18:196 Regulations
- Enforcement for willful noncompliance § 18:197
- § 18:198 Enforcement for negligent noncompliance

Т. **MINNESOTA**

- § 18:199 Security freeze
- § 18:200 Timing of freeze
- § 18:201 Lifting of freeze
- § 18:202 Additional procedures
- § 18:203 Effect of freeze
- § 18:204 Exceptions
- § 18:205 Fees
- § 18:206 Changes to information
- § 18:207 Other exceptions
- § 18:208 Enforcement

lxxxviii

U. MISSISSIPPI

- § 18:209 Credit freeze
- § 18:210 Changes in information
- § 18:211 Lifting of freeze
- § 18:212 Development of procedures
- § 18:213 Fees
- § 18:214 Exceptions

V. MISSOURI

- § 18:215 Security freezes
- § 18:216 Credit freeze
- § 18:217 Timing of freeze
- § 18:218 Fees
- § 18:219 Exceptions
- § 18:220 Restrictions on changes to report
- § 18:221 Temporary lift of freeze
- § 18:222 Removal of freeze
- § 18:223 Notices
- § 18:224 Exceptions

W. MONTANA

- § 18:225 Security freeze
- § 18:226 Timing of freeze
- § 18:227 Temporary lifting of freeze
- § 18:228 Removal of a freeze
- § 18:229 Effect of freeze
- § 18:230 Removal procedures
- § 18:231 Other notices
- § 18:232 Exemptions
- § 18:233 Fees
- § 18:234 Enforcement

X. NEBRASKA

- § 18:235 Credit freeze
- § 18:236 Effect of freeze
- § 18:237 Timing of freeze
- § 18:238 Temporary lift of freeze
- § 18:239 Removal of freeze
- § 18:240 Fees
- § 18:241 Changes to information
- § 18:242 Effect of freeze
- § 18:243 Exemptions

§ 18:244 Enforcement

Y. NEW HAMPSHIRE

Security freeze—Placement of a freeze
Timing of freeze
Temporary lift of freeze
Development of procedures
Denial of access
Disclosure requirements
Length of freeze
Removal of freeze
Requirement of proper identification
Exceptions
Duties of a consumer reporting agency if a security freeze is in effect
Persons not required to place a security freeze
Rights of victims of identity theft
Consumer report files of deceased persons
Police report regarding identity theft
Fees
Amended civil penalties
Notice to consumers

Z. NEW YORK

§ 18:263	Security freeze
§ 18:264	Effect of freeze
§ 18:265	Written confirmation
§ 18:266	Disclosures regarding security freezes
§ 18:267	Temporary lifting of freezes
§ 18:268	Standards for lifting a freeze
§ 18:269	Development of procedures
§ 18:270	Monitoring by the consumer protection board
§ 18:271	Requests for access and treatment of applications as incomplete
§ 18:272	Length and permanent removal of a security freeze
§ 18:273	Requirement for proper identification
§ 18:274	Exemptions
§ 18:275	Fees
§ 18:276	Changes to information
§ 18:277	Other disclosures and requests for information
§ 18:278	Written notification of improper releases of information
§ 18:279	Enforcement

AA. NORTH CAROLINA

§ 18:280	Security freeze for protected consumers
§ 18:281	Duration of freeze
§ 18:282	Fees
§ 18:283	Exceptions
§ 18:284	Exclusions from placing freezes
§ 18:285	Enforcement
§ 18:286	Credit freeze
§ 18:287	Timing of freeze
§ 18:288	Effect on changes to report
§ 18:289	Lifting of freeze
§ 18:290	Development of procedures
§ 18:291	Exceptions to application of law
§ 18:292	Fees
§ 18:293	Minors
§ 18:294	Effect on credit applications
§ 18:295	Additional notices
§ 18:296	Credit Monitoring Services Act
§ 18:297	Enforcement
§ 18:298	Effective date

BB. OKLAHOMA

§ 18:299	Security freeze
§ 18:300	Timing of freeze
§ 18:301	Additional disclosures
§ 18:302	Temporary lift of freeze
§ 18:303	Development of procedures
§ 18:304	Effect of freeze
§ 18:305	Length of freeze
§ 18:306	Exceptions
§ 18:307	Fees
§ 18:308	Changes to information
§ 18:309	Exemptions from placement of security freezes
§ 18:310	Notice requirements
§ 18:311	Enforcement

CC. OREGON

§ 18:312	Placement of freeze
§ 18:313	Effect of freeze
§ 18:314	Timing of freeze
§ 18:315	Temporary lift of freeze
§ 18:316	Removal of freeze
8 18:317	Effect of freeze

§ 18:318	Duration of freeze for protected records
§ 18:319	Fees
§ 18:320	Exceptions to security freezes
§ 18:321	Changes to certain information
DD. P	ENNSYLVANIA
§ 18:322	Credit freeze
§ 18:323	Timing
§ 18:324	Entities not required to place freezes
§ 18:325	Effect
§ 18:326	Requests for frozen information
§ 18:327	Duration of freeze
§ 18:328	Exceptions to nondisclosure of information
§ 18:329	Required actions by consumer reporting agency
§ 18:330	Notification of freeze
§ 18:331	Temporary access and removal of a security freeze
§ 18:332	Secure procedures
§ 18:333	Fees
§ 18:334	Changes to information during freeze
§ 18:335	Civil enforcement
EE. S	OUTH CAROLINA
§ 18:336	Security freeze
§ 18:336 § 18:337	Security freeze Timing of freeze
§ 18:337	Timing of freeze
§ 18:337 § 18:338	Timing of freeze Changes to certain information
§ 18:337 § 18:338 § 18:339	Timing of freeze Changes to certain information Lifting of freeze
§ 18:337 § 18:338 § 18:339 § 18:340	Timing of freeze Changes to certain information Lifting of freeze Fees
§ 18:337§ 18:338§ 18:339§ 18:340§ 18:341§ 18:342	Timing of freeze Changes to certain information Lifting of freeze Fees Exceptions
§ 18:337§ 18:338§ 18:339§ 18:340§ 18:341§ 18:342	Timing of freeze Changes to certain information Lifting of freeze Fees Exceptions Effective date
\$ 18:337 \$ 18:338 \$ 18:339 \$ 18:340 \$ 18:341 \$ 18:342 FF. SO \$ 18:343	Timing of freeze Changes to certain information Lifting of freeze Fees Exceptions Effective date OUTH DAKOTA Credit freeze
\$ 18:337 \$ 18:338 \$ 18:339 \$ 18:340 \$ 18:341 \$ 18:342 FF. SO	Timing of freeze Changes to certain information Lifting of freeze Fees Exceptions Effective date DUTH DAKOTA
\$ 18:337 \$ 18:338 \$ 18:339 \$ 18:340 \$ 18:341 \$ 18:342 FF. SO \$ 18:343 \$ 18:344	Timing of freeze Changes to certain information Lifting of freeze Fees Exceptions Effective date OUTH DAKOTA Credit freeze Timing of freeze
\$ 18:337 \$ 18:338 \$ 18:339 \$ 18:340 \$ 18:341 \$ 18:342 FF. SO \$ 18:343 \$ 18:344 \$ 18:345	Timing of freeze Changes to certain information Lifting of freeze Fees Exceptions Effective date DUTH DAKOTA Credit freeze Timing of freeze Additional disclosures
\$ 18:337 \$ 18:338 \$ 18:339 \$ 18:340 \$ 18:341 \$ 18:342 FF. SO \$ 18:343 \$ 18:344 \$ 18:345 \$ 18:346	Timing of freeze Changes to certain information Lifting of freeze Fees Exceptions Effective date OUTH DAKOTA Credit freeze Timing of freeze Additional disclosures Temporary lift
\$ 18:337 \$ 18:338 \$ 18:339 \$ 18:340 \$ 18:341 \$ 18:342 FF. SO \$ 18:344 \$ 18:345 \$ 18:346 \$ 18:347	Timing of freeze Changes to certain information Lifting of freeze Fees Exceptions Effective date OUTH DAKOTA Credit freeze Timing of freeze Additional disclosures Temporary lift Development of procedures
\$ 18:337 \$ 18:338 \$ 18:339 \$ 18:340 \$ 18:341 \$ 18:342 FF. SO \$ 18:343 \$ 18:344 \$ 18:345 \$ 18:346 \$ 18:347 \$ 18:348	Timing of freeze Changes to certain information Lifting of freeze Fees Exceptions Effective date OUTH DAKOTA Credit freeze Timing of freeze Additional disclosures Temporary lift Development of procedures Effect of freeze

GG. TENNESSEE

§ 18:352 Security freeze

xcii

Timing of freeze § 18:353 § 18:354 Temporary lift of freeze § 18:355 Development of procedures Lift of freeze § 18:356 § 18:357 Effect of freeze § 18:358 Procedures § 18:359 Length of freeze Changes to information § 18:360 § 18:361 Fees § 18:362 Exceptions § 18:363 Enforcement § 18:364 Notices

HH. TEXAS

§ 18:365 Request by consumer Notification of changes to information § 18:366 § 18:367 Notification of security freeze § 18:368 Removal or temporary lifting of security freeze § 18:369 Fees § 18:370 Exemptions § 18:371 Exemptions from placing security alerts or security § 18:372 Honoring of security freezes § 18:373 Applicable fees § 18:374 Security alert—Timing § 18:375 —Notification § 18:376 —Toll-free security alert request number § 18:377 —Verification of consumer identity

II. UTAH

§ 18:378 Security freeze § 18:379 Restrictions on conduct § 18:380 Development of policies § 18:381 Removal of security freeze § 18:382 Timing of lift of freeze § 18:383 Exceptions § 18:384 Fees for security freeze § 18:385 Changes to information in a credit report § 18:386 Enforcement

JJ. VIRGINIA

§ 18:387 Placement of security freeze § 18:388 Temporary lift of freeze

§ 18:389 Removal of freeze § 18:390 Development of procedures § 18:391 Affect of freeze § 18:392 Length of freeze § 18:393 Exceptions § 18:394 Fees § 18:395 Changes to information Exceptions § 18:396 § 18:397 Additional notices Enforcement § 18:398

KK. WASHINGTON

- § 18:399 Credit freeze
- § 18:400 Timing of freeze
- § 18:401 Temporary lift of freeze
- § 18:402 Development of procedures
- § 18:403 Effect of freeze
- § 18:404 Lifting of freeze
- § 18:405 Exceptions
- § 18:406 Changes to information

LL. WISCONSIN

- § 18:407 Security freeze
- § 18:408 Timing of freeze
- § 18:409 Effect of freeze
- § 18:410 Temporary lift of freeze
- § 18:411 Lift of freeze
- § 18:412 Exceptions
- § 18:413 Change to information
- § 18:414 Notice obligations
- § 18:415 Enforcement

MM. WYOMING

- § 18:416 Security freeze
- § 18:417 Effect of freeze
- § 18:418 Timing of freeze
- § 18:419 Development of procedures
- § 18:420 Removal or temporary lift of security freeze
- § 18:421 Exceptions
- § 18:422 Exemptions
- § 18:423 Fees
- § 18:424 Changes to information during a security freeze
- § 18:425 Enforcement

CHAPTER 19. RESTRICTIONS ON CREDIT CARDS

§ 19:1 Restrictions on credit card numbers

A. ALASKA

- § 19:2 Restrictions on credit card receipts
- § 19:3 Enforcement

B. ARIZONA

§ 19:4 Credit card receipt law

C. CALIFORNIA

- § 19:5 Song-Beverly Credit Card Act ("Song Beverly")— Restrictions on credit card receipts
- § 19:6 —Restrictions on collection of information with credit card transactions
- § 19:7 Exceptions
- § 19:8 —Collection of information after conclusion of credit card transaction
- § 19:9 —Civil enforcement
- \$ 19:10 —Statute of limitations for claims under section 1747.08
- § 19:11 —Pineda v. Williams-Sonoma Stores—Zip codes and section 1747.08
- § 19:12 —Retroactivity
- § 19:13 —Forms on the Internet and section 1747.08
- § 19:14 —Online purchases to be picked up in store
- § 19:15 —Collection of birthdate for alcoholic beverages
- § 19:16 —Returns not subject to section 1747.08
- § 19:17 —Jury trials
- § 19:18 —Timing of collection

D. COLORADO

§ 19:19 Credit card receipt law

E. CONNECTICUT

- § 19:20 Restrictions on receipts
- § 19:21 Enforcement

F. DELAWARE

§ 19:22 Credit card receipt law

G. FLORIDA

- § 19:23 Restrictions on receipts
- § 19:24 Enforcement

H. GEORGIA

- § 19:25 Restrictions on credit card receipts
- § 19:26 Powers of administrator
- § 19:27 Enforcement

I. ILLINOIS

- § 19:28 Restrictions on issuance of credit cards
- § 19:29 Restrictions on credit card receipts

J. KANSAS

§ 19:30 Restrictions on credit card receipts

K. LOUISIANA

§ 19:31 Restrictions on credit card receipts

L. MAINE

§ 19:32 Restrictions upon credit card receipts

M. MASSACHUSETTS

§ 19:33 Massachusetts credit card law

N. MICHIGAN

§ 19:34 Restrictions on credit card receipts

O. MINNESOTA

§ 19:35 Credit card offers

P. MONTANA

- § 19:36 Restrictions upon credit cards
- § 19:37 Restrictions on telephone companies

Q. NEVADA

- § 19:38 Restrictions on credit cards
- § 19:39 Restrictions on credit card receipts

R. NEW JERSEY

§ 19:40 Restrictions on credit card receipts

xcvi

S. NEW YORK

- § 19:41 Requirement of carbonless credit and debit card forms
- § 19:42 Restrictions on personal checks, gift certificates, traveler's checks, or money orders
- § 19:43 Restrictions on credit card receipts

T. NORTH CAROLINA

- § 19:44 Restrictions on credit card receipts
- § 19:45 Sale of cash registers and other receipt printing machines

U. OHIO

- § 19:46 Restrictions on credit card receipts
- § 19:47 Enforcement

V. OREGON

§ 19:48 Overview

W. RHODE ISLAND

§ 19:49 Restrictions on credit card receipts

X. SOUTH CAROLINA

- § 19:50 Credit and debit card receipts
- § 19:51 —Enforcement

Y. TENNESSEE

§ 19:52 Restrictions on credit card receipts

Z. TEXAS

§ 19:53 Restrictions on credit card receipts

AA. VIRGINIA

- § 19:54 Restrictions on credit card receipts
- § 19:55 Enforcement

BB. WASHINGTON

- § 19:56 Restrictions on credit card receipts
- § 19:57 Washington D.C. litigation

CC. WISCONSIN

§ 19:58 Restrictions on credit card receipts

CHAPTER 20. INSURANCE PRIVACY

- § 20:1 Introduction
- § 20:2 California Insurance Code—Restrictions upon disclosure
- § 20:3 —Disclosure to health care institutions
- § 20:4 —Other exceptions
- § 20:5 —Disclosures for research studies
- § 20:6 —Disclosures related to mergers
- § 20:7 —Disclosures for marketing
- § 20:8 —Disclosures to affiliates
- § 20:9 —Restrictions upon disclosures by state agencies

CHAPTER 21. FAMILY EDUCATION RIGHTS AND PRIVACY ACT

- § 21:1 Overview
- § 21:2 Application
- § 21:3 Rights of parents
- § 21:4 Rights of students
- § 21:5 Annual notification requirements
- § 21:6 Records of law-enforcement units
- § 21:7 Rights of parents or eligible students to inspect and review records
- § 21:8 Charges for copies of education records
- § 21:9 Limitations on inspection and review
- § 21:10 Requesting amendment of records
- § 21:11 Right to a hearing
- § 21:12 Prior consent and disclosure
- § 21:13 Disclosures without consent
- § 21:14 Anonymized records
- § 21:15 Nonmandatory disclosures
- § 21:16 Authentication
- § 21:17 Record retention
- § 21:18 Inspection rights
- § 21:19 Restrictions on redisclosure
- § 21:20 Conditions on disclosure
- § 21:21 Disclosure related to federal or state programs
- § 21:22 Disclosure of information in health and safety emergencies
- § 21:23 Directory information
- § 21:24 Conditions on disclosure of information regarding juvenile justice systems
- § 21:25 Delegations of authority
- § 21:26 Conflicts of laws
- § 21:27 Submissions to the Office

xcviii

§ 21:28 Complaints
§ 21:29 Investigative procedures
§ 21:30 Form of notice of investigations
§ 21:31 Enforcement process
§ 21:32 Enforcement
§ 21:33 FERPA litigation and disclosure of information
§ 21:34 Kentucky

CHAPTER 22. IDENTITY THEFT

I. INTRODUCTION

§ 22:1 Introduction

II. FEDERAL LAW

- § 22:2 Federal Identity Theft and Assumption Deterrence Act
- § 22:3 —Intent under section 1028(a)(1)
- § 22:4 —Use of a forged signature
- § 22:5 —Application to deceased individuals

III. SPECIFIC STATE LAWS

A. ALABAMA

- § 22:6 Identity theft
- § 22:7 Trafficking in stolen identities
- § 22:8 Obstructing justice using false identity
- § 22:9 Restitution
- § 22:10 Block on false information in credit reports
- § 22:11 —Enforcement
- § 22:12 Order to correct records
- § 22:13 Civil enforcement generally

B. ALASKA

- § 22:14 Overview
- § 22:15 Factual declaration of innocence
- § 22:16 Establishment of database
- § 22:17 Right to file police report regarding identity theft
- § 22:18 Criminal impersonation

C. ARIZONA

§ 22:19 Identity theft

D.	ARKANSAS
§ 22:20	Financial identity fraud
E.	CALIFORNIA
§ 22:21 § 22:22 § 22:23 § 22:24 § 22:25	Obtaining and using personal identifying information Investigation and court action for identity theft Disclosures of credit information Sale of deceptive identification documents Civil cause of action for identity theft
F.	COLORADO
\$ 22:26 \$ 22:27 \$ 22:28 \$ 22:29 \$ 22:30 \$ 22:31 \$ 22:32	Identity theft and factual innocence finding Forgery Criminal possession of forgery devices Identity theft Criminal possession of a financial device Gathering identity information by deception Possession of identity theft tools
G.	CONNECTICUT
§ 22:33	Identity theft
H.	DELAWARE
§ 22:34 § 22:35	Identity theft —Passports
I.	FLORIDA
\$ 22:36 \$ 22:37 \$ 22:38 \$ 22:39 \$ 22:40 \$ 22:41 \$ 22:42 \$ 22:43	Fraudulent use of personal identification information Harassment by use of personal information Use of personal information of deceased individuals Use of fictitious personal information Enhancements and reductions in sentences Exceptions to liability Restitution Correction of public records
J.	GEORGIA
\$ 22:44 \$ 22:45 \$ 22:46 \$ 22:47	Identity fraud Restrictions on fraudulent identification documents —Enforcement Civil actions

§ 22:63

Identity theft

§ 22:64 Police reporting requirements

TABLE OF	CONTENTS
§ 22:48 § 22:49	Use of scanning devices and reencoders —Enforcement
K.	HAWAII
§ 22:50	Identity theft
L.	IDAHO
§ 22:51	Identity theft
M.	ILLINOIS
§ 22:52 § 22:53 § 22:54	Unauthorized acquisition of personal information Identity theft crimes Credit and public utility service—Identity theft
N.	INDIANA
§ 22:55	Identity deception
Ο.	IOWA
§ 22:56	Identity theft
P.	KANSAS
§ 22:57	Identity theft
Q.	KENTUCKY
§ 22:58	Identity theft
R.	LOUISIANA
§ 22:59	Identity theft
S.	MAINE
§ 22:60	Misuse of identification
Т.	MARYLAND
§ 22:61 § 22:62	Identity fraud Enforcement
U.	MASSACHUSETTS

	V.	MICHIGAN
	22:65	Crimes related to personal identifying information
	22:66	Identity theft
	22:67	Offenses related to use of personal information
§	22:68	Obtaining or possessing personal identifying information of another person
§	22:69	Verification of information for victims of identity theft
§	22:70	Denial or reduction of credit or public utility services to victim of identity theft
	W.	MINNESOTA
8	22:71	Identity theft
	22:72	Electronic use of false pretenses to obtain identity
	X.	MISSISSIPPI
§	22:73	Fraudulent use of Social Security number or identifying information to obtain goods
§	22:74	Identity theft investigations
	Y.	MISSOURI
§	22:75	Identity theft
§	22:76	Additional rights in security freeze bill
	22:77	Identity theft report
	22:78	Manufacture of means of forged identification
	22:79	Insurance identification cards
	Z.	MONTANA
§	22:80	Identity theft
	AA.	NEBRASKA
§	22:81	Criminal impersonation
§	22:82	Application of Nebraska's law to court actions
	22:83	Unauthorized use of a financial transaction device
	BB.	NEVADA
§	22:84	Identity theft

DD. NEW JERSEY

CC. NEW HAMPSHIRE

§ 22:86 Identity theft

§ 22:85 Identity fraud

Table of	Contents
§ 22:87	Obtaining information under false pretenses
§ 22:88	Sale of false documents
§ 22:89	Enforcement
§ 22:90	Correction of records
§ 22:91	Police reporting
§ 22:92	Effect of rejected requests
§ 22:93	Scanning and reencoding devices
EE.	. NEW MEXICO
§ 22:94	Identity theft
FF.	NEW YORK
8 22.95	Identity thaft

- § 22:96 —First, second, and third degree
- § 22:97 Unlawful possession of personal identification information in the third degree
- § 22:98 Defenses based upon misrepresentations of age
- § 22:99 Other identity theft crimes
- § 22:100 Unlawful possession of a skimmer device
- § 22:101 Other identity theft laws

GG. NORTH CAROLINA

- § 22:102 Identity theft
- § 22:103 Trafficking in stolen identities
- § 22:104 Other remedies
- § 22:105 Investigation of offenses

HH. NORTH DAKOTA

§ 22:106 Identity theft

II. OHIO

- § 22:107 Identity theft
- § 22:108 Civil remedies

JJ. **OKLAHOMA**

§ 22:109 Identity theft

KK. **OREGON**

§ 22:110 Identity theft

LL. PENNSYLVANIA § 22:111 Identity theft

MM. RHODE ISLAND

§ 22:112 Impersonation and identity fraud

NN. SOUTH CAROLINA

- § 22:113 Personal Financial Security Act
- § 22:114 Identity theft
- § 22:115 Identity fraud
- § 22:116 Effective date
- § 22:117 Correction of public records
- § 22:118 Identity theft database
- § 22:119 Household garbage

OO. SOUTH DAKOTA

§ 22:120 Identity theft

PP. TENNESSEE

§ 22:121 Identity Theft Deterrence Act

QQ. TEXAS

- § 22:122 Identity theft
- § 22:123 Identity theft by electronic device

RR. UTAH

§ 22:124 Identity fraud

SS. VERMONT

§ 22:125 Identity theft

TT. VIRGINIA

- § 22:126 Identity theft
- § 22:127 Blocking of information

UU. WASHINGTON

- § 22:128 Identity theft
- § 22:129 Remote identification scanning

VV. WASHINGTON D.C.

§ 22:130 Identity theft

§ 22:131 Correction of public records

WW. WEST VIRGINIA

- § 22:132 Identity theft
 - XX. WISCONSIN
- § 22:133 Identity theft

YY. WYOMING

- § 22:134 Identity theft
- § 22:135 Factual declaration of innocence after identity theft

CHAPTER 23. RESTRICTIONS UPON THE USE OF SOCIAL SECURITY NUMBERS

I. IN GENERAL

- § 23:1 Introduction
- § 23:2 Social Security number discrimination
- § 23:3 Discovery regarding Social Security numbers
- § 23:4 Constitutional right of protection for Social Security numbers
- § 23:5 The Privacy Act of 1974
- § 23:6 Litigation issues and the Privacy Act
- § 23:7 The Intelligence Reform and Terrorism Prevention Act of 2004

II. SPECIFIC STATE PROVISIONS

A. ALABAMA

§ 23:8 Overview

B. ALASKA

- § 23:9 Overview
- § 23:10 Exceptions
- § 23:11 Additional restrictions on collection
- § 23:12 Enforcement
- § 23:13 Disclosure of Social Security numbers
- § 23:14 Interagency disclosures of Social Security numbers
- § 23:15 General exceptions
- § 23:16 Agency regulations
- § 23:17 Enforcement

C.	ARIZONA
§ 23:19 § 23:20	Restrictions on state entities Enforcement
D.	ARKANSAS
§ 23:23	Overview
E.	CALIFORNIA
\$ 23:24 \$ 23:25 \$ 23:26 \$ 23:27 \$ 23:28 \$ 23:29 \$ 23:30 \$ 23:31 \$ 23:32	Defining "access" to a website Restrictions on recording Creation of task force Amendments to disclosure requirements Restrictions on county recorders Use of fees Reporting requirements
§ 23:33	Restrictions in California's election code
	COLORADO
§ 23:34	Overview
G.	CONNECTICUT
\$ 23:35 \$ 23:36 \$ 23:37 \$ 23:38	Public policy for Social Security numbers Enforcement
Н.	DELAWARE
§ 23:39	Overview
I. § 23:40	FLORIDA Overview
J.	GEORGIA
§ 23:41 § 23:42	Overview Restrictions on Social Security numbers

cvi

K.	GUAM
§ 23:43 § 23:44 § 23:45	Restrictions on Social Security numbers Exceptions Enforcement
L.	HAWAII
§ 23:46 § 23:47 § 23:48 § 23:49	Overview Additional restrictions on Social Security numbers Enforcement Government reporting
M.	IDAHO
§ 23:50	Protection of personal information
N.	ILLINOIS
§ 23:51 § 23:52 § 23:53 § 23:54	Overview Use of Social Security numbers on insurance cards Use of Social Security numbers on licenses Other restrictions
0.	INDIANA
\$ 23:55 \$ 23:56 \$ 23:57 \$ 23:58 \$ 23:59	Overview Restrictions on the recording of documents Government Social Security numbers Enforcement of Social Security number laws Restrictions on Social Security numbers
P.	KANSAS
\$ 23:60 \$ 23:61 \$ 23:62 \$ 23:63 \$ 23:64 \$ 23:65 \$ 23:66	Social Security number restrictions—Insurers —Postsecondary educational institutions Public filings Exceptions Other restrictions Exceptions Enforcement
Q.	LOUISIANA
§ 23:67	Overview
R.	MAINE
§ 23:68	Restrictions on Social Security numbers

§ 23:69	Enforcement
S.	MARYLAND
§ 23:70 § 23:71	Overview Restrictions on printing of Social Security numbers on checks
Т.	MICHIGAN
§ 23:72 § 23:73 § 23:74	Overview Exceptions Privacy policy requirements related to the collection of Social Security numbers
§ 23:75	Exemption from disclosure under the Freedom of Information Act
§ 23:76 § 23:77	Enforcement Restrictions on recording of documents with Social Security numbers
U.	MINNESOTA
§ 23:78	Overview
V.	MISSOURI
§ 23:79	Overview
W.	NEBRASKA
§ 23:80	Restrictions on Social Security numbers
X.	NEVADA
§ 23:81 § 23:82	Overview Additional restrictions on Social Security numbers
Y.	NEW JERSEY
§ 23:83 § 23:84 § 23:85	Restrictions on Social Security numbers generally Exemptions and exceptions Restrictions upon Social Security numbers in publicly recorded documents
§ 23:86 § 23:87	Restrictions upon institutions of higher education Restrictions on Social Security numbers
Z.	NEW MEXICO
§ 23:88	Overview

cviii

AA. NEW YORK

§	23:89	Social Security number law
§ 23:90 Exemptions		Exemptions
§	23:91	Preemption
	23:92	Exemption for the state
	23:93	Data security and Social Security numbers
§	23:94	Waiver of New York's Social Security number law
Š	23:95	Enforcement
	23:96	Defenses to enforcement actions
§	23:97	Disclosure of Social Security number
§	23:98	Exceptions
§	23:99	Enforcement
§	23:100	Defenses
§	23:101	Restrictions on government disclosure of Social Security numbers
§	23:102	Restrictions on public filings
§	23:103	Employee personal identifying information
§	23:104	—Enforcement
	BB.	NORTH CAROLINA
Ş	23:105	Restrictions upon Social Security numbers
	23:106	Restrictions upon governmental use of Social Security numbers
Ş	23:107	Restrictions upon the filing of documents
	23:108	Removal of information
	23:109	Posting of notices
_	23:110	Removal by clerks
	CC.	OKLAHOMA
§	23:111	Overview
	DD.	OREGON
§	23:112	Restrictions on personal information held by district attorneys
§	23:113	Restrictions upon the disclosure of Social Security numbers
	EE.	PENNSYLVANIA
Ş	23:114	Social Security Number Privacy Act
-	23:115	Duties of the department
	23:116	Prohibitions on use of Social Security numbers
	23:117	Requirement to apply for an exemption

§ 23:118 § 23:119	Exclusion Other restrictions on the disclosure of Social
, 20.110	Security numbers
323:120	Continuing use of Social Security numbers
3 23:121	Opt-out requests
3 23:122	Opt-out requests and denial of services
3 23:123	Exceptions
§ 23:124	Enforcement
FF.	RHODE ISLAND
3 23:125	Overview
323:126	Additional Social Security number restrictions
$\S 23:127$	Enforcement
§ 23:128	Other restrictions
§ 23:129	Enforcement
GG.	SOUTH CAROLINA
323:130	Overview
23:131	Enforcement
3 23:132	Removal of images
23:133	South Carolina—Posting of signs
	Effective date
НН.	SOUTH DAKOTA
323:135	Overview
	Restrictions on Social Security numbers
II.	TENNESSEE
§ 23:137	Overview
3 23:138	Social Security/Taxpayer ID numbers
3 23:139	Social Security number restrictions
3 23:140	Enforcement
JJ	TEXAS
	Requirement of a privacy policy
3 23:142	Exceptions
3 23:143	Enforcement
§ 23:144	Restrictions on Social Security numbers in official business
323:145	Property
§ 23:146	Certain uses of Social Security Numbers Business and Commerce Code section 501.001

§	23:147	Exceptions
3	20.147	Exceptions

§ 23:148 Other restrictions

KK. UTAH

§ 23:149 Overview

LL. VERMONT

- § 23:150 Overview
- § 23:151 Restrictions upon state agencies
- § 23:152 Enforcement

MM. VIRGINIA

§ 23:153 Overview

NN. WASHINGTON

- § 23:154 Overview
- § 23:155 Exemption from public inspection
- § 23:156 Presentation of documents

OO. WEST VIRGINIA

- § 23:157 Limitation on release of certain personal information maintained by state agencies and entities regarding state employees
- § 23:158 Personal information maintained by state entities
- § 23:159 Resale or redisclosure
- § 23:160 Use of student Social Security numbers
- § 23:161 Authority to utilize scanner technology in sales; authority to execute contracts relating thereto

PP. WISCONSIN

§ 23:162 Overview

QQ. WYOMING

§ 23:163 Official registry list information

CHAPTER 24. DATA SECURITY, CYBERSECURITY, AND DATA DESTRUCTION

I. INTRODUCTION

§ 24:1 In general

II. FEDERAL LAW

§ 24:2	Impact of Sarbanes-Oxley and federal obstruction laws on data destruction and privacy
§ 24:3	SEC Division of Corporate Finance CF Disclosure Guidance: Topic No. 2 Cybersecurity
§ 24:4	SEC Division of Investment Management Guidance update on cybersecurity for funds and advisors
§ 24:5	Interaction of SOX and international law
§ 24:6	Executive Order on improving critical infrastructure
§ 24:7	cybersecurity (February 12, 2013) —Defining critical infrastructure
§ 24.7 § 24:8	—Information sharing
§ 24.0 § 24:9	—Consultative process
§ 24.3 § 24:10	—Cybersecurity framework
§ 24:10 § 24:11	—Privacy and civil liberties
§ 24:11	Executive Order on cybersecurity and information
o .	sharing (February 13, 2015)
§ 24:13	Incentives under the Executive Order on cybersecurity
§ 24:14	DoD cybersecurity reporting
§ 24:15	NIST Framework
§ 24:16	Document retention issues for broker-dealers
§ 24:17	Gramm-Leach-Bliley Act—Safeguards rule for customer information
§ 24:18	Security and incident response guidelines
§ 24:19	Development and implementation of information security program
§ 24:20	—Involve the board of directors
§ 24:21	—Assess risk
§ 24:22	—Manage and control risk
§ 24:23	—Oversee service provider arrangements
§ 24:24	—Adjust the program
§ 24:25	—Report to the board
§ 24:26	Guidelines on cell phone and personal digital assistants security
§ 24:27	FTC security suggestions
§ 24:28	FACT Act document destruction rule

III. SPECIFIC STATE PROVISIONS

- A. ALABAMA (RE-ALPHABETIZE FOLLOWING ALPHA HIERARCHY HEADINGS ACCORDINGLY)
- § 24:29 Data breach

В.	ALASKA
§ 24:30 § 24:31 § 24:32 § 24:33	Disposal of records Adoption of policies and procedures Exemptions Enforcement
C.	ARIZONA
§ 24:34 § 24:35 § 24:36	
D.	ARKANSAS
§ 24:37 § 24:38	Overview Exemptions
E.	CALIFORNIA
\$ 24:39 \$ 24:40 \$ 24:41 \$ 24:42	Data security law Auto dealers and data security Restrictions on computer vendors Restrictions on network security
F.	COLORADO
§ 24:43 § 24:44	Overview Protection of personal identifying information
G.	CONNECTICUT
\$ 24:45 \$ 24:46 \$ 24:47 \$ 24:48 \$ 24:49 \$ 24:50	Data destruction Enforcement Exceptions Government contractors Employers Connecticut health insurers
Н.	DELAWARE
\$ 24:51 \$ 24:52 \$ 24:53 \$ 24:54 \$ 24:55	Safe destruction of documents Violations Exemptions Employers Data security
I.	DISTRICT OF COLUMBIA
§ 24:56	Security requirements

§ 24:57	Disposal
J.	FLORIDA
§ 24:58 § 24:59 § 24:60 § 24:61	Requirements for data security Requirements for disposal of customer records Enforcement No private cause of action
K.	GEORGIA
§ 24:62 § 24:63 § 24:64	Data destruction Powers of administrator Enforcement
L.	HAWAII
§ 24:65 § 24:66 § 24:67 § 24:68	Data destruction Exceptions Enforcement Reporting requirements of government agencies
M.	ILLINOIS
\$ 24:69 \$ 24:70 \$ 24:71 \$ 24:72 \$ 24:73 \$ 24:74	Disposal of materials containing personal information Data security Entities subject to the federal Health Insurance Portability and Accountability Act of 1996 Biometric Information Privacy Act —Exceptions —Enforcement
N.	INDIANA
§ 24:75 § 24:76 § 24:77 § 24:78	Overview Data security Enforcement Health care providers
Ο.	KANSAS
§ 24:79	Data security
P.	KENTUCKY
§ 24:80 § 24:81	Data destruction Data security

cxiv

Q.	LOUISIANA
§ 24:82	Data security
R.	MARYLAND
§ 24:83 § 24:84 § 24:85	Data destruction Data security Exceptions
S.	MASSACHUSETTS
§ 24:86 § 24:87 § 24:88 § 24:89	Data destruction Enforcement Data security regulations Standards for the protection of personal information of residents of the commonwealth
§ 24:90	Duty to protect and standards for protecting personal information
§ 24:91 § 24:92 § 24:93	Computer system security requirements Effective date Commonwealth of Massachusetts v. TD Bank
Т.	MICHIGAN
	Data destruction —Enforcement
U.	MINNESOTA
§ 24:96	Liability for retention of security or identification information
V.	MONTANA
-	Data destruction Insurance data security requirements
W.	NEBRASKA
§ 24:99	Data security
X.	NEW MEXICO
	Data security
Y.	NEVADA
§ 24:101	Overview

\$ 24:102 \$ 24:103 \$ 24:104 \$ 24:105 \$ 24:106 \$ 24:107 Z.	Data security Safe harbor Exceptions Enforcement Effective date Injunctive relief NEW JERSEY
§ 24:108	Overview
§ 24:109 § 24:110	Proposed data security regulations Enforcement
§ 24:110 § 24:111	New Jersey health security law
5 24.111	new sersey hearth security law
AA.	. NEW YORK
§ 24:112	Data destruction
§ 24:113	Enforcement
§ 24:114	Data destruction—New York City
§ 24:115	Reasonable security requirement
§ 24:116	Enforcement
§ 24:117	Cybersecurity requirements for financial services companies (23 NYCRR 500)—Cybersecurity program
§ 24:118	—Cybersecurity policy
§ 24:119	—Chief Information Security Officer
§ 24:120	—Penetration Testing and Vulnerability
	Assessments
§ 24:121	—Audit Trail
§ 24:122	Cybersecurity requirements for financial services companies (23 NYCRR 500)—Access privileges
§ 24:123	Cybersecurity requirements for financial services companies (23 NYCRR 500)—Application security
§ 24:124	—Risk assessment
§ 24:125	—Cybersecurity personnel and intelligence
§ 24:126	—Third party service provider security policy
§ 24:127	—Multi-Factor Authentication
§ 24:128	—Limitations on data retention
§ 24:129	—Training and monitoring
§ 24:130	—Encryption of nonpublic information
§ 24:131	—Incident response plan
§ 24:132	—Notices to superintendent
§ 24:133	—Confidentiality
§ 24:134	-Exemptions
§ 24:135	—Enforcement
§ 24:136	—Effective date

	—Transitional periods —Severability
BB.	NORTH CAROLINA
§ 24:139	Overview
CC.	OREGON
§ 24:140 § 24:141	
DD	RHODE ISLAND
\$ 24:142 \$ 24:143 \$ 24:144 \$ 24:145 \$ 24:146	—Exceptions
EE.	SOUTH CAROLINA
§ 24:147 § 24:148	
FF.	TENNESSEE
§ 24:149	Overview
GG	TEXAS
\$ 24:150 \$ 24:151 \$ 24:152 \$ 24:153 \$ 24:154 \$ 24:155	Disposal of documents containing PII Exceptions
НН	. UTAH
§ 24:156 § 24:157	Maintenance of personal information Data destruction
	VERMONT Overview
	WASHINGTON Overview

- § 24:160 Security breaches and credit cards
- § 24:161 Effective date

KK. WISCONSIN

§ 24:162 Disposal of records containing personal information

IV. COMMON SECURITY-RELATED ISSUES

- § 24:163 Loss of laptop computers
- § 24:164 What are "reasonable" technological safeguards
- § 24:165 Payment card industry compliance
- § 24:166 Putting it together
- § 24:167 Incident response
- § 24:168 Addressing data destruction/retention conundrum

CHAPTER 25. NOTICE OF SECURITY BREACHES

I. INTRODUCTION

- § 25:1 Introduction
- § 25:2 Overview of notice of security breach laws
- § 25:3 State data breach laws "At a Glance"
- § 25:4 Data security legislation
- § 25:5 Theft of laptop computers
- § 25:6 Steps to comply with notice of security breach laws
- § 25:7 Access
- § 25:8 Form of notice

II. GLB ACT REQUIREMENTS

- § 25:9 Response programs for unauthorized access to customer information and customer notice
- § 25:10 Notice to customers of unauthorized access, content and delivery

III. HIPAA AND PERSONAL HEALTH RECORD BREACHES

- § 25:11 HIPAA and Personal Health Records Breaches
- § 25:12 Defining a "breach"
- § 25:13 Statutory requirements
- § 25:14 Timing of notice
- § 25:15 Form of notice
- § 25:16 Notice to other entities

cxviii

§ 25:17	Report to Congress on breaches
§ 25:18	Requirement to issue regulations
§ 25:19	Temporary breach notification requirement for vendors of personal health records and other non-
	HIPAA covered entities
§ 25:20	Notification by third-party service providers
§ 25:21	Application of requirements for timeliness, method and content of notifications
§ 25:22	Notification of the Secretary
§ 25:23	Enforcement
§ 25:24	Regulations and effective date

IV. CYBER INCIDENT REPORTING FOR CRITICAL INFRASTRUCTURE ACT OF 2022 (CIRCIA)

§ 25:25	Applicability
§ 25:26	Required reporting on covered cyber incidents and ransom payments
§ 25:27	Exceptions to required reporting on covered cyber
	incidents and ransom payments
§ 25:28	CIRCIA Report submission deadlines
§ 25:29	Required manner and form of CIRCIA Reports
§ 25:30	Required information for CIRCIA Reports
§ 25:31	Required information for Covered Cyber Incident Reports
§ 25:32	Required information for Ransom Payment Reports
§ 25:33	Required information for Joint Covered Cyber Incident and Ransom Payment Reports
§ 25:34	Required information for Supplemental Reports
§ 25:35	Third party reporting procedures and requirements
§ 25:36	Data and records preservation requirements
§ 25:37	Request for information and subpoena procedures
§ 25:38	Civil enforcement of subpoenas
§ 25:39	Referral to the Department of Homeland Security Suspension and Debarment Official
§ 25:40	Referral to Cognizant Contracting Official or Attorney General
§ 25:41	Treatment of information and restrictions on use
§ 25:42	Procedures for protecting privacy and civil liberties
§ 25:43	Other procedural measures

V. HIPAA BREACH REGULATIONS

§ 25:44	Applicability
§ 25:45	Notification to individuals
§ 25:46	Discovery of breaches

Timing of notice
Form of notice
Notification to the media
Issues to consider with the HIPAA media notice
Notification to the Secretary
Notification by a business associate
Timing of notice—Business associate
Form of notice
Administrative requirements and burdens of proof
FTC PHR Breach Rule
Breach notification requirements
Timing of notice
Form of notice
Notice to other entities
Enforcement
Effective date
Centers for Medicare & Medicaid Services requirements

VI. GENERAL

§ 25:64 Veterans Administration security breach and data security regulations

VII. SPECIFIC STATE PROVISIONS

A. ALABAMA

§ 25:65	Notice of security breach
§ 25:66	Timing of notice
$\S~25:67$	Form of notice
§ 25:68	Notice to other entities
§ 25:69	Entities that maintain data
§ 25:70	Enforcement
§ 25:71	Government entities
§ 25:72	Preemption

B. ALASKA

§ 25:73	Notice of security breach
$\S 25:74$	Timing of disclosures
§ 25:75	Entities that maintain data
§ 25:76	Form of disclosures
§ 25:77	Notice to other entities
§ 25:78	Enforcement
§ 25:79	Effective date

α	ARIZON	٨
U.	ARIZUN	Α.

§ 25:80	Notice of security breaches
§ 25:81	Timing of disclosures
§ 25:82	Notice to Attorney General
§ 25:83	Notice to others
§ 25:84	Form of disclosures
§ 25:85	Entities that maintain data
§ 25:86	Existing security policies
§ 25:87	Exemptions from disclosures
§ 25:88	Enforcement
§ 25:89	Preemption
§ 25:90	Effective date

D. ARKANSAS

§ 25:91	Notice of security breaches
§ 25:92	Timing of notice
§ 25:93	Attorney general notice
§ 25:94	Entities that maintain data
§ 25:95	Existing security policies
§ 25:96	Enforcement

E. CALIFORNIA

§ 25:97	Notice of security breaches
§ 25:98	Timing of disclosures
§ 25:99	Form of disclosures
§ 25:100	Notice to other entities
§ 25:101	Entities that maintain data
§ 25:102	Existing security policies
§ 25:103	Enforcement
§ 25:104	Preemption
§ 25:105	Additional burdens
§ 25:106	California's Office of Privacy Protection's
	recommendations
§ 25:107	State agency notice law—Notice of security breaches
§ 25:108	Timing of disclosures
§ 25:109	Form of disclosures
§ 25:110	Entities that maintain data
§ 25:111	Existing security policies
§ 25:112	California Department of Insurance guidance/notice

F. COLORADO

§ 25:113 Notice of security breaches

\$ 25:114 \$ 25:115 \$ 25:116 \$ 25:117 \$ 25:118 \$ 25:119 \$ 25:120 \$ 25:121 \$ 25:122	Timing of disclosures Form of disclosures Entities that maintain data Existing security policies Exemption from disclosure Notice to other entities Enforcement Preemption Effective date
G.	CONNECTICUT
\$ 25:123 \$ 25:124 \$ 25:125 \$ 25:126 \$ 25:127 \$ 25:128 \$ 25:130 \$ 25:131 \$ 25:132 \$ 25:133 \$ 25:134	Notice of security breaches Timing of disclosures Form of disclosures Notice to other entities Credit monitoring Entities that maintain data Existing security policies Exemptions from disclosures Enforcement Insurance data security law—Department of Insurance notice Insurance data security law—Implementation of written information security program Insurance data security law—Notice of security breach
Н.	DELAWARE
\$ 25:135 \$ 25:136 \$ 25:137 \$ 25:138 \$ 25:139 \$ 25:140 \$ 25:141 \$ 25:142	Notice of data security breaches Timing of disclosures Form of disclosures Entities that maintain data Existing security policies Notice to other entities Preemption Enforcement
I.	FLORIDA
\$ 25:143 \$ 25:144 \$ 25:145 \$ 25:146 \$ 25:147	Notice of security breach Timing of disclosures Entities that maintain data Form of notice Preemption

cxxii

§ 25:148 § 25:149	Notice to other entities Enforcement
J.	GEORGIA
§ 25:150	Notice of security breaches
§ 25:151	Timing of disclosures
§ 25:152	Form of notice
§ 25:153	Entities that maintain data
§ 25:154	Notice to other entities
§ 25:155	Telephone security breach
§ 25:156	Enforcement
K.	GUAM
§ 25:157	Notice of security breach
§ 25:158	Timing of notice
§ 25:159	Form of notice
§ 25:160	Entities that maintain data
§ 25:161	Existing security policies
§ 25:162	Preemption
§ 25:163	Enforcement
L.	HAWAII
§ 25:164	Notice of security breaches
§ 25:165	Timing of disclosures
§ 25:166	Form of disclosures
§ 25:167	Entities that maintain data
§ 25:168	Notice to other entities
§ 25:169	Enforcement
§ 25:170	Preemption
§ 25:171	Effective date
M.	IDAHO
§ 25:172	Notice of security breaches
§ 25:173	Timing of disclosures
§ 25:174	Form of disclosures
§ 25:175	Entities that maintain data
§ 25:176	Existing security policies
§ 25:177	Enforcement
§ 25:178	Preemption
N.	ILLINOIS
§ 25:179	Notice of security breach

\$ 25:180 \$ 25:181 \$ 25:182 \$ 25:183 \$ 25:184 \$ 25:185 \$ 25:186 \$ 25:187	Timing of disclosures Form of notice Entities that maintain data Form of notice Existing security policies State agency requirements Entities subject to the federal Health Insurance Portability and Accountability Act of 1996 Enforcement
O.	INDIANA
\$ 25:188 \$ 25:189 \$ 25:190 \$ 25:191 \$ 25:192 \$ 25:193 \$ 25:194 \$ 25:195 \$ 25:196 \$ 25:197 \$ 25:198	Notice of security breaches—State agencies Timing of disclosures—State agencies Form of disclosures—State agencies Notice to other entities—State agencies Notice of security breaches Timing of disclosures Entities that maintain data Form of disclosures Notice to other entities Existing security policies Enforcement
P.	IOWA
\$ 25:199 \$ 25:200 \$ 25:201 \$ 25:202 \$ 25:203 \$ 25:204 \$ 25:205	Notice of security breach Entities that maintain data Timing of notice Form of notice Notice to other entities Exceptions Enforcement
Q.	KANSAS
\$ 25:206 \$ 25:207 \$ 25:208 \$ 25:209 \$ 25:210 \$ 25:211 \$ 25:212 \$ 25:213	Notice of security breaches Timing of disclosures Form of disclosures Entities that maintain data Existing security policies Notice to other entities Enforcement Preemption
R.	KENTUCKY

cxxiv

§ 25:214 Notice of security breach

§ 25:215	Timing of disclosures
§ 25:216	e
§ 25:217	Form of disclosures
§ 25:218	Notice to other entities
§ 25:219	Existing security policies
§ 25:220	Preemption
S.	LOUISIANA
§ 25:221	Notice of security breaches
§ 25:222	Entities that maintain data
§ 25:223	Exemptions from disclosures
§ 25:224	Timing of disclosures
§ 25:225	Form of disclosures
§ 25:226	
§ 25:227	
§ 25:228	
§ 25:229	•
§ 25:230	
§ 25:231	Litigation under Louisiana security breach law
Т.	MAINE
§ 25:232	Notice of security breaches
§ 25:233	Timing of disclosures
§ 25:234	Form of disclosures
§ 25:235	Entities that maintain data
§ 25:236	Notice to other entities
§ 25:237	Preemption
§ 25:238	Enforcement
U.	MARYLAND
§ 25:239	Notice of security breaches
§ 25:240	
§ 25:241	Entities that maintain data
§ 25:242	Form of notice
§ 25:243	
§ 25:243 § 25:244	Notice to other entities
§ 25:244	Notice to other entities Waiver of law
	Notice to other entities Waiver of law
§ 25:244 § 25:245	Notice to other entities Waiver of law Preemption
§ 25:244 § 25:245 § 25:246	Notice to other entities Waiver of law Preemption Enforcement

§ 25:249	Entities that maintain data
§ 25:250	Notice to other entities
§ 25:251	Additional requirements on state agencies
§ 25:252	Timing of notice
§ 25:253	Effect of existing policies
§ 25:254	Enforcement
§ 25:255	Additional rulemaking
W.	MICHIGAN
§ 25:256	Notice of security breaches
§ 25:257	Entities that maintain data
§ 25:258	Timing of notice
§ 25:259	Form of disclosures
§ 25:260	Notice to other entities
§ 25:261	Exemptions from disclosures
§ 25:262	Enforcement
§ 25:263	Effective date
§ 25:264	Improper advertising of security breaches
§ 25:265	—Enforcement
X.	MINNESOTA
§ 25:266	Notice of security breaches
§ 25:267	Timing of disclosures
§ 25:268	Form of disclosures
§ 25:269	Entities that maintain data
§ 25:270	Existing security policies
§ 25:271	Preemption
§ 25:272	Notice to other entities
§ 25:273	Enforcement
Y.	MISSISSIPPI
§ 25:274	Notice of security breaches
§ 25:275	Timing of disclosures
§ 25:276	Entities that maintain data
§ 25:277	Form of notice
§ 25:278	Existing security policies
§ 25:279	Preemption
§ 25:280	Enforcement
§ 25:281	Effective date
Z.	MISSOURI

Notice of security breach

cxxvi

§ 25:282

\$ 25:283 \$ 25:284 \$ 25:285 \$ 25:286 \$ 25:287 \$ 25:288 \$ 25:289 \$ 25:290	Timing of disclosures Entities that maintain data Form of notice Exemptions from disclosures Notice to other entities Existing security policies Preemption Enforcement
AA.	MONTANA
§ 25:291	Notice of security breaches
§ 25:292	Timing of disclosures
§ 25:293	Form of disclosures
§ 25:294	Entities that maintain data
§ 25:295	Notice to other entities
§ 25:296	Existing security policies
§ 25:297	Enforcement
§ 25:298	Effective date
§ 25:299	Insurance security breaches—Notice of security breaches
§ 25:300	—Entities that maintain data
§ 25:301	—Notice to other entities
§ 25:302	—Timing of notice
§ 25:303	—Development of procedures
§ 25:304	—Montana guidance
BB.	NEBRASKA
§ 25:305	Notice of security breaches
§ 25:306	Timing of disclosures
§ 25:307	Form of disclosures
§ 25:308	Notice to other entities
§ 25:309	Entities that maintain data
§ 25:310	Existing security policies
§ 25:311	Enforcement
§ 25:312	Preemption
CC.	NEVADA
§ 25:313	Notice of security breaches
§ 25:314	Timing of disclosures
§ 25:315	Form of disclosures
§ 25:316	Entities that maintain data
§ 25:317	Existing security policies
§ 25:318	Preemption

§ 25:319	Notice to other entities
§ 25:320	Data collector's private right of action
§ 25:321	Enforcement
§ 25:322	Notice requirements on government entities
	•
DD.	NEW HAMPSHIRE
§ 25:323	Notice of security breaches
§ 25:324	Timing of disclosures
§ 25:325	Form of disclosures
§ 25:326	Entities that maintain data
§ 25:327	Notice to other entities
§ 25:328	Enforcement
§ 25:329	Preemption
§ 25:330	Effective date
§ 25:331	Unauthorized disclosure of PHI
§ 25:332	Enforcement
EE.	NEW JERSEY
§ 25:333	Notice of security breaches
§ 25:334	Timing of disclosures
§ 25:335	Form of disclosures
§ 25:336	Entities that maintain data
-	
§ 25:337	Exemptions from disclosure
§ 25:338	Existing security policies
§ 25:339	Notice to other entities
§ 25:340	Enforcement
FF.	NEW MEXICO
§ 25:341	Notice of security breach
§ 25:342	Timing of notice
§ 25:343	Entities that maintain data
§ 25:344	Form of notice
§ 25:345	Notice requirements
§ 25:346	Exemptions
§ 25:347	Notice to other entities
§ 25:348	Enforcement
GG.	NEW YORK
§ 25:349	Businesses
§ 25:350	Timing of disclosures
§ 25:351	Form of disclosures
	Entities that maintain data

cxxviii

§ 25:353 § 25:354 § 25:355 § 25:356	Notice to other entities Enforcement State agencies New York City security breaches
нн.	NORTH CAROLINA
§ 25:357	Notice of security breaches
§ 25:358	Timing of disclosures
§ 25:359	Form of disclosures
§ 25:360 § 25:361	Entities that maintain data Notice to other entities
§ 25:362	Existing security policies
§ 25:363	Enforcement policies
II.	NORTH DAKOTA
§ 25:364	Notice of security breaches
§ 25:365	Timing of disclosures
§ 25:366	Form of disclosures
§ 25:367	Notice to other entities
§ 25:368	Entities that maintain data
§ 25:369	Existing security policies
§ 25:370	Enforcement
JJ.	OHIO
§ 25:371	Notice of security breach
§ 25:372	Timing of disclosures
§ 25:373	Form of disclosures
§ 25:374	Entities that maintain data
§ 25:375	Notice to other entities
§ 25:376	Enforcement
§ 25:377	Preemption
§ 25:378	Ohio guidance
§ 25:379	Governmental entities—Notice of security breach —Timing of disclosures
§ 25:380 § 25:381	—Form of disclosures
•	—Entities that maintain data
§ 25:382 § 25:383	—Notice to other entities
§ 25:384	—Enforcement
KK.	OKLAHOMA
§ 25:385	Notice of security breach
§ 25:386	Timing of disclosures

§ 25:387	Form of disclosures
§ 25:388	Entities that maintain data
§ 25:389	Existing security policies
§ 25:390	Enforcement
§ 25:391	Effective date
	ODEGON
LL.	OREGON
§ 25:392	Notice of security breach
§ 25:393	Timing of notice
§ 25:394	Entities that maintain data
§ 25:395	Form of notice
§ 25:396	Notice to other entities
§ 25:397	Exceptions
§ 25:398	Enforcement
MM	. PENNSYLVANIA
§ 25:399	Notice of security breach
§ 25:400	Timing of notice
§ 25:401	Form of notice
§ 25:402	Entities that maintain data
§ 25:403	Notice to other entities
§ 25:404	Preemption
§ 25:405	Existing security policies
§ 25:406	Enforcement
NN.	PUERTO RICO
§ 25:407	Notice of security breach
§ 25:408	Timing of notice
§ 25:409	Notice to other entities
§ 25:410	Entities that maintain data
§ 25:411	Form of notice
§ 25:412	Existing security policies
§ 25:413	Public entities
§ 25:414	Enforcement
§ 25:415	Regulations
§ 25:416	Regulations—Entities that maintain data
§ 25:417	Regulations—Timing of notice
§ 25:418	Regulations—Form of notice
§ 25:419	Regulations—Enforcement
OO.	RHODE ISLAND

cxxx

§ 25:420 Notification of breach

\$ 25:421 \$ 25:422 \$ 25:423 \$ 25:424 \$ 25:425 \$ 25:426	Timing of notice Notice to other entities Form of notice Effect of other policies Preemption Enforcement
§ 25:427	Rhode Island Division of Insurance SOUTH CAROLINA
\$ 25:428 \$ 25:429 \$ 25:430 \$ 25:431 \$ 25:432 \$ 25:433 \$ 25:435 \$ 25:436 \$ 25:437 \$ 25:438 \$ 25:439 \$ 25:441	Private entities—Notice of security breach —Timing of disclosure —Entities that maintain data —Form of notice —Existing security policies —Enforcement —Preemption —Notice to other entities —Effective date Agencies—Notice of security breach —Timing of disclosure —Entities that maintain data —Form of notice
§ 25:441 § 25:442 § 25:443 § 25:444	 Effect of existing procedures Enforcement Notice to other entities Effective date
§ 25:444 § 25:445	Consumer-credit-reporting agency—Enforcement
QQ.	SOUTH DAKOTA
\$ 25:446 \$ 25:447 \$ 25:448 \$ 25:449 \$ 25:450 \$ 25:451 \$ 25:452	Notice of security breach Timing of disclosures Notice to other entities Form of notice Existing security policies Enforcement Preemption
RR.	TENNESSEE
\$ 25:453 \$ 25:454 \$ 25:455 \$ 25:456 \$ 25:457	Notice of security breaches Timing of disclosures Form of disclosures Entities that maintain data Existing security policies
8 20.401	Existing security policies

§ 25:458 § 25:459	Notice to other entities Exemptions from disclosures
§ 25:460	Enforcement
SS.	TEXAS
§ 25:461	Notice of security breaches
§ 25:462	Timing of disclosures
§ 25:463	Form of disclosures
§ 25:464	Entities that maintain data
§ 25:465	Existing security policies
§ 25:466	Notification to other entities
§ 25:467 § 25:468	Enforcement
8 20:400	State and local agency breach notification requirements
TT.	UTAH
§ 25:469	Notice of security breach
\$ 25:470	Timing of notice
$\S~25:471$	Entities that maintain data
$\S~25:472$	Form of notice
§ 25:473	Effect of existing policies
§ 25:474	Preemption
§ 25:475	Enforcement
UU.	VERMONT
$\S~25:476$	Notice of security breaches
$\S~25:477$	Timing of disclosures
$\S~25:478$	Entities that maintain data
$\S~25:479$	Form of disclosures
§ 25:480	Notice to other entities
§ 25:481	Preemption
§ 25:482	Enforcement
\$ 25:483	Enforcement against government entities
§ 25:484	Vermont Attorney General guidance
VV.	VIRGIN ISLANDS
$\S~25:485$	Notice of security breach
$\S~25:486$	Timing of notice
§ 25:487	Form of notice
§ 25:488	Entities that maintain data
§ 25:489	Existing security policies
WW.	. VIRGINIA

§ 25:490 Notice of security breaches

cxxxii

§	25:491	Timing of notice
§	25:492	Form of disclosure
§	25:493	Entities that maintain data
§	25:494	Notice to other entities
§	25:495	Existing security policies
§	25:496	Exemptions from notice
§	25:497	Employers and payroll service providers
§	25:498	Enforcement
§	25:499	Preemption
§	25:500	Breach of medical information notification—Notice
		of security breach
§	25:501	—Timing of disclosures
§	25:502	—Form of disclosures
	25:503	—Entities that maintain data
	25:504	—Notice to other entities
§	25:505	—Preemption
	XX.	WASHINGTON
8	25:506	Notice of security breaches
	25:507	Timing of disclosures
	25:508	Form of disclosures
	25:509	Notice to other entities
	25:510	Entities that maintain data
	25:511	Existing security policies
	25:512	Enforcement
	25:513	Other requirements
	YY.	WASHINGTON D.C.
8	25:514	Notice of security breach
-	25:515	Timing of disclosures
-	25:516	Form of notice
-	25:517	Entities that maintain data
-	25:518	Existing security policies
-	25:519	Exemptions from disclosures
-	25:520	Notice to other entities
-	25:521	Enforcement
2	20.021	Emorement
	ZZ.	WEST VIRGINIA
§	25:522	Notice of security breach
§	25:523	Timing of notice
-	25:524	Form of notice
-		Entities that maintain data
		Notice to other entities

§ 25:527 § 25:528	· · · ·
AA	A. WISCONSIN
\$ 25:529 \$ 25:530 \$ 25:531 \$ 25:532 \$ 25:533 \$ 25:534 \$ 25:535	Timing of notice Form of notice Notice to other entities Preemption
BB	B. WYOMING
\$ 25:536 \$ 25:537 \$ 25:538 \$ 25:539 \$ 25:540 \$ 25:541	Timing of disclosures Form of disclosures Enforcement
	Volume 3
CHAF	PTER 26. VIDEO PRIVACY
I. VII	DEO PRIVACY ISSUES GENERALLY
· ·	Introduction Video privacy and the Internet
II. FE	EDERAL PROVISIONS
\$ 26:3 \$ 26:4 \$ 26:5 \$ 26:6 \$ 26:7 \$ 26:8 \$ 26:9 \$ 26:10 \$ 26:11 \$ 26:12	Federal Video Privacy Protection Act (VPPA) VPPA—Requirements of court orders —Data destruction —Enforcement and damages —Litigation —Limitations on litigation —Vicarious liability —Who is a subscriber? —Are UDIDs PII? —Application to streaming video
§ 26:13	—Knowledge of violations under the VPPA/internet

cxxxiv

video

Table of Contents

TIDLE OF	October
§ 26:14	Federal Cable TV Privacy Act of 1984
§ 26:15	—Restrictions on disclosure
§ 26:16	—Governmental entities' right to obtain information
§ 26:17	—Subscriber access to information
§ 26:18	—Destruction of information
§ 26:19	—Enforcement
§ 26:20	—Disclosure
§ 26:21	VPPA—Third-party transfers and intra-corporate transfers—No duty of minimization under the VPPA
§ 26:22	—No transfer to third parties based upon joint account
III. S	PECIFIC STATE PROVISIONS
Λ	CALIFORNIA
§ 26:23	Restrictions on satellite and cable television corporations
§ 26:24	Prohibition of disclosure by persons providing video
§ 20.24	recording sales or rentals without written consent
§ 26:25	Enforcement
В.	CONNECTICUT
§ 26:26	Videotape privacy
C.	MICHIGAN
§ 26:27	Michigan video protection law—A summary of
	differences from the VPPA
§ 26:28	Michigan video protection law
§ 26:29	Standing under Michigan's video protection law
D.	MINNESOTA
§ 26:30	Videotape privacy laws
§ 26:31	Form of consent
§ 26:32	Exclusion from evidence
§ 26:33	Destruction of information
§ 26:34	Refusal of service
§ 26:35	Civil liability
3 20.00	
E.	NEW JERSEY
§ 26:36	Cable Subscriber Privacy Protection Act
§ 26:37	Restrictions on disclosures
§ 26:38	Civil enforcement
§ 26:39	Revocation of consent

§ 26:40	Notice requirements
§ 26:41	Destruction of personally identifiable information
§ 26:42	Disclosure of names and addresses
§ 26:43	Disclosures at the request of the customer
§ 26:44	Correction of information
§ 26:45	Upstream communications
§ 26:46	Permitted monitoring
§ 26:47	Use of information to collect debts
§ 26:48	Examination of aggregated data
§ 26:49	Civil enforcement
F.	NEW YORK
§ 26:50	Video tape rental records
§ 26:51	-
§ 26:52	Enforcement of the restrictions upon disclosure of video tape rental and sales records

G. TENNESSEE

- § 26:53 Video Consumer Privacy Act
 - H. WASHINGTON D.C.
- § 26:54 Cable privacy law

IV. CABLE PRIVACY AND ISPS

§ 26:55 Cable privacy and ISPs

CHAPTER 27. RESTRICTIONS UPON STATE AGENCIES

I. OVERVIEW

§ 27:1	Introduction
§ 27:2	Use of email by public employees

- $\S~27:3$ First Amendment issues and spam filters
- § 27:4 Public records acts and privacy
- § 27:5 Public records acts and the attorney-client privilege
- § 27:6 Metadata as a public record
- § 27:7 Cell phone records do not fall within FOIA
- § 27:8 Public records and cell phones—Potentially a different answer in some states
- § 27:9 —Application to personal devices if texts used for work purposes

cxxxvi

II. FEDERAL RESTRICTIONS

§ 27:10	FOIA/Public Records Acts
§ 27:11	Glomar exceptions
$\S 27:12$	Privacy Act of 1974—Conditions of disclosure
$\S 27:13$	—Accounting of disclosures
$\S 27:14$	—Access to records
$\S 27:15$	—Agency requirements
$\S 27:16$	—Agency regulations
$\S 27:17$	—Civil enforcement
$\S 27:18$	—Litigation issues and the Privacy Act
§ 27:19	—Privacy Act and damages
§ 27:20	—Legal guardians
§ 27:21	—Criminal enforcement
§ 27:22	—General exemptions
§ 27:23	—Archival records
§ 27:24	—Government contractors
§ 27:25	—Mailing lists
§ 27:26	—Matching agreements
§ 27:27	—Verification and opportunity to contest findings
§ 27:28	—Sanctions
§ 27:29	—Reporting requirements
§ 27:30	—Effect of other laws
§ 27:31	—Data Integrity Boards
§ 27:32	Privacy Act regulations—Application to the Bureau of Consumer Financial Protection
§ 27:33	—Intent of Act
§ 27:34	—Procedures for requests pertaining to individual
° 07 05	records
§ 27:35	—Times, places and requirements for identification of the individual making the request
$\S 27:36$	—Request for corrections or amendments
$\S 27:37$	—Notification of dispute
§ 27:38	—Disclosure of records to third parties
$\S 27:39$	—Accounting of disclosures
$\S 27:40$	—Fees
§ 27:41	Rehabilitation Act Amendments of 1986—Electronic and information technology
§ 27:42	——Electronic and information technology standards
§ 27:43	——Exemption for national security systems
§ 27:44	——Construction of the law
§ 27:45	— —Technical assistance
§ 27:46	— —Agency evaluations
§ 27:40 § 27:47	——Reports
§ 27:41 § 27:48	— — Cooperation
× 41.40	— COODELATION

§ 27:49	— —Enforcement
§ 27:50	Driver's Privacy Protection Act
§ 27:51	—Resale or redisclosure of information
$\S 27:52$	—Criminal and civil enforcement
§ 27:53	—Union activity
$\S 27:54$	—Liquidated damages under the DPPA
§ 27:55	—Knowledge of impermissible purpose under the DPPA
§ 27:56	—Multiple purposes under the DPPA can create a violation
§ 27:57	-No requirement of actual damages under the DPPA
§ 27:58	—Litigation—Reseller liability
§ 27:59	The Privacy Protection Act
§ 27:60	—Work product materials
§ 27:61	—Other documents
§ 27:62	—Civil remedies
§ 27:63	—No exclusion of evidence
§ 27:64	—Attorney General regulations
§ 27:65	Rehabilitation Act of 1973 and electronic and
3 =00	information technology accessibility regulations
§ 27:66	-Exceptions
§ 27:67	—Software applications and operating systems
§ 27:68	—Web-based Intranet and Internet information and
5	applications
§ 27:69	—Telecommunications products
§ 27:70	—Video and multimedia products
§ 27:71	—Self-contained, closed products
§ 27:72	—Desktop and portable computers
§ 27:73	—Information, documentation, and support
§ 27:74	—Additional requirements
3	Tuanional Toquiromonio
III. S'	TATE SPECIFIC PROVISIONS
A.	ARIZONA
§ 27:75	Anti-identification procedures
§ 27:76	Internet privacy for state agencies and disclosures or websites
В.	ARKANSAS
§ 27:77	E-mails and public record laws
§ 27:78	Postsecondary institution electronic communication privacy policy
C.	CALIFORNIA
§ 27:79	Information Practices Act of 1977

cxxxviii

§ 27:80	—Contents of records
§ 27:81	—Notice
§ 27:82	—Maintenance of records
§ 27:83	—Contracts for the operation and maintenance of records
§ 27:84	—Rules of conduct
§ 27:85	—Safeguards
§ 27:86	—Designation of employee responsible for agency compliance
§ 27:87	—Department of Justice review
§ 27:88	—Disclosure of personal information
§ 27:89	—Exceptions to disclosures
§ 27:90	—Disclosures related to advocacy for persons with disabilities
§ 27:91	—Accounting for disclosures
§ 27:92	—Motor vehicles
§ 27:93	—Retention of accounting and original documents
§ 27:94	—Maintenance of records
§ 27:95	—Costs and fees for records
§ 27:96	—Inspection of personal information in records
§ 27:97	—Amendment of records
§ 27:98	—Confidentiality of sources
§ 27:99	—Exceptions for records regarding property rights
§ 27:100	—Restrictions on disclosure to subject of information
$\S 27:101$	—Exceptions to access
§ 27:102	—Disclosure of personal information relating to others
§ 27:103	—Civil remedies
$\S 27:104$	—Remedies for failure to maintain records
$\S 27:105$	—Litigation related to personnel actions
§ 27:106	—Criminal enforcement
$\S 27:107$	—Restrictions on commercial distribution
$\S 27:108$	—Disclosure of license holder's information
§ 27:109	—Removal from mailing requests
§ 27:110	—Requirements placed on the Director of General Services
§ 27:111	—Disclosure of information related to liens
§ 27:112	—Disclosure of information to the district attorney
§ 27:113	—Release of information by the State Board of
	Equalization
§ 27:114	—Discovery by law enforcement
§ 27:115	—Restrictions on modifications
§ 27:116	—Exemptions for other laws
§ 27:117	The Brown Act
§ 27:118	—Teleconferencing requirements
-	0 1

§ 27:119	—Secret votes
§ 27:120	—Reimbursement
§ 27:121	—Additional requirements and exemptions
§ 27:122	Public Records Act
§ 27:123	—Elected officials
§ 27:124	—Inspection requirements
§ 27:125	—Notification of denial of request
§ 27:126	—Additional voluntary requirements
§ 27:127	—Assistance to members of the public
§ 27:128	—Exemption for certain records
§ 27:129	—Education employees and disclosures of addresses
	and phone numbers
§ 27:130	—Voter registration information and confidentiality
§ 27:131	—Disclosure of public records
§ 27:132	—Disclosure of employment contracts
§ 27:133	—Computer software
§ 27:134	—Broker-dealer license information
§ 27:135	—Information regarding corporate facilities
§ 27:136	—Disclosure of utility customer information
§ 27:137	—Exemption from disclosure related to reproductive
	health services facilities
§ 27:138	—Enforcement
§ 27:139	—Interaction with California's electronically
0	collected personal information law
§ 27:140	—Disclosure of legal memorandum
§ 27:141	—Justification for withholding records
§ 27:142	—Purpose of request irrelevant
§ 27:143	—Enforcement
§ 27:144	—Exemption of records of complaints
§ 27:145	—District attorneys and inspection or copying
0.07.4.6	nonexempt public records
§ 27:146	—Libraries supported by public funds
§ 27:147	—Sale, exchange or otherwise providing records
0.0-1.0	subject to disclosure to private entities
§ 27:148	—Electronically collected personal information
§ 27:149	—Closed sessions law
§ 27:150	—Special requirements regarding the Public
	Utilities Commission
§ 27:151	—Closed sessions based upon advice of counsel
§ 27:152	—Record of topics discussed and decisions made at
	closed sessions
§ 27:153	—Closed sessions and responses to confidential final
9 07.154	draft audit reports
§ 27:154	—Disclosure of nature of closed session
§ 27:155	—Closed session of the Gambling Control Commission

§ 27:156	—Disorderly conduct
§ 27:157	—Fees
§ 27:158	Restrictions upon Internet use on state computer
§ 27:159	Disclosure of private information—Appointed officials
§ 27:160	Privacy policy—State departments and agencies
§ 27:161	Rules of court regarding access to trial court records
§ 27:162	—Application and scope of rules
§ 27:163	—General right of access
§ 27:164	—Remote electronic access in extraordinary criminal cases
§ 27:165	—Access on a case-by-case basis
§ 27:166	—Bulk distribution
§ 27:167	—Off-site access
§ 27:168	—Limitations and conditions
§ 27:169	—Conditions of use by persons accessing records
§ 27:170	—Notices to persons accessing records
§ 27:171	—Access policy
§ 27:172	—Contracts with vendors
§ 27:173	—Fees for access
§ 27:174	—Electronic access to court calendars
§ 27:175	 —Minimum contents for electronically accessible court calendars, indexes, and registers of actions
§ 27:176	—Information that must be excluded from court calendars, indexes, and registers of actions
§ 27:177	City of San Francisco private information law
§ 27:178	—Enforcement
D.	COLORADO
§ 27:179	Information security
§ 27:180	Privacy policy
E.	DELAWARE
§ 27:181	Privacy policy requirements
F.	IDAHO
§ 27:182	Inmate access to personal information
G.	ILLINOIS
§ 27:183	Internet Privacy Task Force
TT	·
Н.	
§ 27:184	Fair Information Practices Act

MAINE T. § 27:185 Information technology leadership **MARYLAND** J. § 27:186 Requests for changes to public records § 27:187 Review § 27:188 Civil enforcement § 27:189 Criminal enforcement § 27:190 Immunity K. **MICHIGAN** § 27:191 Retention and disclosure of personally identifiable information MINNESOTA § 27:192 Restrictions MONTANA Μ. § 27:193 Collection of personally identifiable information § 27:194 -Requirements N. NEVADA § 27:195 Disclosure of personal information O. NEW YORK § 27:196 Collection and disclosure of personal information NORTH CAROLINA Р. § 27:197 Government restrictions Q. OHIO § 27:198 Disclosure of personally identifiable information § 27:199 Restrictions on use of personal information § 27:200 Rights of individuals § 27:201 Enforcement R. SOUTH CAROLINA

Family Privacy Protection Act of 2002

Restrictions on websites

cxlii

§ 27:202

§ 27:203

- § 27:204 Obtaining personal information from a state agency for commercial solicitation
 - S. UTAH
- § 27:205 Collection of personally identifiable information
- § 27:206 Restrictions on court websites

T. VIRGINIA

- § 27:207 Government data collection and dissemination
 - U. WASHINGTON
- § 27:208 Disclosure of personal information
- § 27:209 Personal information under Washington law

CHAPTER 28. CONSTITUTIONAL AND STATUTORY ISSUES—PRIVACY RIGHTS AND RESTRICTIONS

§ 28:1 Introduction

I. FEDERAL PROVISIONS

- § 28:2 Fourth Amendment and privacy
- § 28:3 —Geolocation data—U.S. v. Jones
- § 28:4 The *Leon* warrant exception and wiretap warrants
- § 28:5 Searches of cell phones, including incident to arrest and probationary exceptions
- § 28:6 Cell phone privacy and third parties
- § 28:7 Text message privacy
- § 28:8 Limitations on collection of email
- § 28:9 Metadata and photos
- § 28:10 International email issues and ISPs
- § 28:11 Information from devices in cars
- § 28:12 Fourteenth Amendment and privacy
- § 28:13 Computer searches of home computers
- § 28:14 Fourth Amendment and an "untimely" search of a computer
- § 28:15 Defendant's right to computer searches
- § 28:16 Providing a computer to a third party for repairs as a waiver of privacy
- § 28:17 Anonymous computers and warrants
- § 28:18 Peer-to-peer and privacy
- § 28:19 Computer searches and special needs exceptions to the warrant requirement

§ 28:20	Warrantless search of computers of probationers
§ 28:21	Location data in a cell phone—Cell cite geolocation information—Post <i>U.S. v. Jones</i>
§ 28:22	GPS tracking by a public employer under the
3 20.22	workplace exception
§ 28:23	Seizure of information beyond a warrant
§ 28:24	Reasonable expectation of privacy and false identities
§ 28:25	Rental cars and warrants
§ 28:26	Access to hotel records and warrants
§ 28:27	Requests for identification of online book purchasers
§ 28:28	Discovery of email addresses
§ 28:29	IP addresses and expectations of privacy
§ 28:30	Decryption and the Fifth Amendment
§ 28:31	Expungement of criminal records
§ 28:32	Warrants and videotaping
§ 28:33	Disclosure of health records
§ 28:34	Constitutional issues and collection of prescription information
§ 28:35	OTC medications and privacy
§ 28:36	Implied consent in a dispute resolution process
§ 28:37	Federal regulations of personnel records
§ 28:38	Federal Video Voyeur Act
§ 28:39	Videotaping
§ 28:40	Searches due to terrorist concerns on public
	transportation
§ 28:41	Border searches generally
§ 28:42	Searches of computers at borders
II. SI	TATE PROVISIONS
Α.	ALASKA
§ 28:43	Constitutional right of privacy
В.	ARIZONA
§ 28:44	Constitutional right to privacy
§ 28:45	Posting of personal information on the World Wide Web
§ 28:46	Enforcement
C.	CALIFORNIA
§ 28:47	Common law and constitutional bases of privacy
§ 28:48	Reproductive health service facility employees— Posting of information
§ 28:49	—Exceptions due to the CDA

cxliv

Table of Contents

THE OF	CONTENTS
§ 28:50	—Enforcement
§ 28:51	—Sale or trade of information regarding employees of reproductive health services facilities
§ 28:52	-Enforcement
§ 28:53	Information encoded on a driver's license
§ 28:54	Physical invasion of privacy
§ 28:55	Personnel records of peace officers
§ 28:56	Restrictions on local summary criminal history
§ 28:57	—Exception for public utilities
§ 28:58	— —Enforcement
§ 28:59	—Compelling need
§ 28:60	—Fingerprint records
§ 28:61	—Fees for providing information
§ 28:62	—Exceptions
§ 28:63	—Other provisions
§ 28:64	The California Consumer Privacy Act of 2018 is discussed in greater detail in chapter 29.
D.	FLORIDA
§ 28:65	Constitutional right to privacy
E.	HAWAII
§ 28:66	Constitutional right of privacy
F.	ILLINOIS
§ 28:67	Constitutional right of privacy
§ 28:68	Disclosure of customer information to law-
	enforcement agencies
§ 28:69	· · · · · · · · · · · · · · · · · · ·
§ 28:70	—Enforcement
§ 28:71	—Construction with other laws
G.	LOUISIANA
§ 28:72	Constitutional right of privacy
H.	MINNESOTA
§ 28:73	Constitutional right of privacy
I.	MISSOURI
§ 28:74	Posting of information on the Internet

§ 28:75	Constitutional right of privacy
K.	NEW JERSEY
§ 28:76 § 28:77	Constitutional right of privacy Restrictions on recording devices in cars
L.	NEW YORK
§ 28:78	Statutory right of privacy
M.	OREGON
§ 28:79	Personal information regarding public investigators
N.	RHODE ISLAND
§ 28:80 § 28:81 § 28:82	Statutory right of privacy Interaction with government disclosure laws Civil enforcement
O.	SOUTH CAROLINA
§ 28:83	Constitutional right of privacy
P.	TEXAS
§ 28:84	Restrictions on disclosure of information regarding attorneys
§ 28:85 § 28:86	Capture or use of biometric identifier —Enforcement
	WASHINGTON
•	
§ 28:87 § 28:88	Constitutional right of privacy Unlawful release of court and law-enforcement employee information
R.	WISCONSIN
§ 28:89 § 28:90	Statutory right of privacy Wisconsin GPS law

J. MONTANA

CHAPTER 29. U.S. STATE GENERAL PRIVACY LAWS

I. CALIFORNIA CONSUMER PRIVACY ACT OF 2018 (THE "CCPA")

§ 29:1	General rights
§ 29:2	Consumer rights
§ 29:3	Employee Exemption
§ 29:4	Response to consumer request
$\S 29:5$	Business disclosure to service provider exemption
§ 29:6	Collection or retention of personal information not otherwise collected or retained in ordinary course of business
§ 29:7	Rights and freedoms of other consumers
§ 29:8	B-to-B exemption
§ 29:9	Civil action—Remedies
§ 29:10	—Requirements to bring action
§ 29:11	Attorney General guidance; civil action brought by Attorney General; amount and allocation of penalties
§ 29:12	Adoption of regulations; public participation; subject
	matter; enforcement actions
§ 29:13	Void and unenforceable provisions of contract or agreement
§ 29:14	Liberal construction of title
§ 29:15	Construction with federal law, United States Constitution, and California Constitution
§ 29:16	Operative date
$\S 29:17$	Severability
§ 29:18	CCPA regulations—Title and scope
§ 29:19	—Overview of required notices
§ 29:20	—Notice at collection of personal information
§ 29:21	—Notice of right to opt-out of sale of personal information
§ 29:22	—Notice of financial incentive
§ 29:23	—Privacy policy
§ 29:24	—Methods for submitting requests to know and requests to delete
§ 29:25	—Responding to requests to know and requests to delete
§ 29:26	—Responding to requests to know
\$ 29:27	—Responding to requests to delete
\$ 29:28	—Service providers
\$ 29:29	—Requests to opt-out
-	*

§ 29:30	-Requests to opt-in after opting out of the sale of
	personal information
§ 29:31	—Training; record-keeping
§ 29:32	—Requests to access or delete household information
§ 29:33	—General rules regarding verification
§ 29:34	—Verification for password-protected accounts
§ 29:35	—Verification for non-accountholders
§ 29:36	—Authorized agent
§ 29:37	-Minors under 13 years of age-Process for opting-in
	to sale of personal information
§ 29:38	—Minors 13 to 16 years of age
§ 29:39	-Notices to minors under 16 years of age
§ 29:40	—Discriminatory practices
§ 29:41	—Calculating the value of consumer data
§ 29:42	—Severability

II. CALIFORNIA PRIVACY RIGHTS AND ENFORCEMENT ACT OF 2020 (THE "CPRA")

§ 29:43 Overview

III. COLORADO CONSUMER PROTECTION ACT

§ 29:44	Applicability
§ 29:45	Obligations
§ 29:46	Consumer personal data rights
§ 29:47	—The right to opt out
§ 29:48	—Right of access
§ 29:49	—Right to correction
§ 29:50	—Right to deletion
§ 29:51	—Right to data portability
§ 29:52	—Responding to consumer requests
§ 29:53	Processing de-identified data
§ 29:54	Duties of controllers—Duty of transparency
§ 29:55	—Duty of purpose specification
§ 29:56	—Duty of data minimization
§ 29:57	—Duty to avoid secondary use
§ 29:58	—Duty of care
§ 29:59	—Duty to avoid unlawful discrimination
§ 29:60	—Duty regarding sensitive data
§ 29:61	Data protection assessments—Attorney general access and evaluation—Definition
§ 29:62	Liability
§ 29:63	Enforcement—Penalties
§ 29:64	Rules
§ 29:65	Effective date

cxlviii

IV. VIRGINIA CONSUMER DATA PROTECTION ACT

§ 29:66	Scope
§ 29:67	Personal data rights; consumers
§ 29:68	Data controller responsibilities; transparency
§ 29:69	Responsibility according to role; controller and processor
§ 29:70	Data protection assessments
§ 29:71	Processing de-identified data; exemptions
§ 29:72	Limitations
§ 29:73	Violations of chapter; civil penalties
§ 29:74	Enforcement; civil penalty
§ 29:75	Consumer Privacy Fund
8 29.76	Effective date

CHAPTER 30. RADIO FREQUENCY IDENTIFICATION AND TRACKING DEVICES

§ 30:1 Introduction

I. FEDERAL PROVISIONS

- $\S~30:2$ Mobile tracking devices
- § 30:3 Auto blackbox regulations

II. STATE PROVISIONS

A. CALIFORNIA

- $\S 30:4$ Radio frequency identification law
- § 30:5 —Exceptions
- § 30:6 Subcutaneous tracking devices
- § 30:7 —Enforcement
- § 30:8 Automated license plate readers

B. DELAWARE

- § 30:9 Installation of car tracking devices
 - C. MISSOURI
- § 30:10 Employee microchips

D. NORTH CAROLINA

§ 30:11 Sex offender monitoring—Global positioning system requirements

§ 30:12	— —Enrollment requirements
§ 30:13	——Court orders
§ 30:14	——Request for termination of monitoring
§ 30:15	— Failure to enroll—Tampering with devices
§ 30:16	——Fees
E.	TEXAS

§ 30:17 Unlawful installation of a tracking device

CHAPTER 31. HEALTH INFORMATION AND PRIVACY AND SECURITY

- § 31:1 A preliminary matter—Health Information Technology for Economic and Clinical Health Act of 2009
- § 31:2 Health Information Technology for Economic and Clinical Health Act—Increased civil penalties

I. INTRODUCTION

§ 31:3	Importance of health privacy
§ 31:4	Health record interoperability
§ 31:5	An overview of California's approach
§ 31:6	Thoughts on interoperability models
§ 31:7	Personal health records
§ 31:8	Restrictions on disclosure of prescription drug information
§ 31:9	Disclosure of medical and prescription information to law enforcement
§ 31:10	HIPAA and discovery
§ 31:11	Liability for medical records disclosed outside the course and scope of employment
§ 31:12	Federal jurisdiction in HIPAA

II. HIPAA

A. IN GENERAL

§ 31:13	Background
§ 31:14	Compliance dates for implementation of new or modified standards and implementation specifications
§ 31:15	Overview of HIPAA
§ 31:16	Inapplicability to employers
§ 31:17	An overview of recent changes to HIPAA
§ 31:18	Other rulemaking and guidance
§ 31:19	Changes to the definition of business associate

Table of Contents

31:20	Changes to the definition of electronic media
31:21	Enforcement for business associates
31:22	Time for compliance
31:23	45 CFR § § 160.306, 160.308, 160.310, and 160.402 regarding complaints to the secretary, compliance reviews, restrictions on certain conduct, and civil monetary penalties
31:24	Factors for assessing civil monetary penalties
31:25	Affirmative defenses and waiver of penalties
31:26	Changes to the applicability language
31:27	Changes regarding hybrid entities—Organizational requirements
31:28	Security and safeguards
31:29	Agreements with business associates
31:30	Physical and technical safeguards
31:31	Organizational requirements
31:32	Policies procedures and documentation requirements
31:33	Changes to the definition of electronic media
31:34	Applicability of 45 CFR § 164.500
31:35	Use and disclosures of protected health information
31:36	Sale of protected health information and minimum necessary
31:37	Satisfactory assurances and decedent's information
31:38	Organizational requirements
31:39	Uses and disclosures for treatment, payment, or health care operations
31:40	Uses and disclosures for which authorization is required
31:41	Genetic information
31:42	Uses and disclosures requiring an opportunity to agree or to object
31:43	Uses and disclosures for which an authorization or opportunity to agree or to object is not required
31:44	Other requirements relating to uses and disclosures of protected health information
31:45	Notice of privacy practices
31:46	Rights to request privacy protection for protected health information
31:47	Access of individuals to protected health information
31:48	Administrative requirements
31:49	Transition provisions
31:50	Costs and benefits
31:51	Privacy and security requirements
31:52	New statutory requirements under ARRA
31:53	Annual guidance

§ 31:54	Education on health information privacy
§ 31:55	Application of knowledge elements associated with contracts
§ 31:56	Application of civil and criminal penalties
§ 31:57	Business associate contracts required for certain entities
§ 31:58	Improved enforcement under the Social Security Act
§ 31:59	Effective date and regulations
§ 31:60	Distribution of certain civil monetary penalties collected
§ 31:61	Establishment of methodology to distribute percentage of CMPS collected to harmed individuals
§ 31:62	Effective date
§ 31:63	Audits
§ 31:64	Relationship to other laws—HIPAA state preemption
§ 31:65	—HIPAA
§ 31:66	Construction of law
§ 31:67	Reports on compliance
§ 31:68	Study and report on application of privacy and security requirements to non-HIPAA covered entities
§ 31:69	Guidance on implementation specification to de- identify protected health information
§ 31:70	GAO report on treatment disclosures
§ 31:71	Report required
§ 31:72	Study
§ 31:73	Restrictions on certain disclosures and sales of health information; accounting of certain protected health information disclosures; access to certain information in electronic format
§ 31:74	Disclosures required to be limited to the limited data set or the minimum necessary
§ 31:75	Determination of minimum necessary
§ 31:76	Application of exceptions
§ 31:77	Exception
§ 31:78	Accounting of certain protected health information disclosures required if covered entity uses electronic health record
§ 31:79	Regulations
§ 31:80	Response to requests for accounting
§ 31:81	Effective date
§ 31:82	Prohibition on sale of EHRs or PHI
§ 31:83	Regulations regarding the prohibition of sale
§ 31:84	Effective date
§ 31:85	Access to certain information in electronic format
§ 31:86	Conditions on certain contacts as part of health care operations—Marketing

Table of Contents

§ 31:87	Refill reminders
§ 31:88	Opportunity to opt out of fundraising
§ 31:89	Effective date
§ 31:90	Duties under HIPAA and state law
§ 31:91	Intent and violations of HIPAA
§ 31:92	Government violations of the Rehabilitation Act
В.	SCOPE OF HIPAA REGULATIONS AND ENFORCEMENT
§ 31:93	Statutory basis and purpose
§ 31:94	Applicability
§ 31:95	Modifications
§ 31:96	General rule and exceptions—Preemption
§ 31:97	Process for requesting exception determinations
§ 31:98	Duration of effectiveness of exception determinations
§ 31:99	Applicability
§ 31:100	Principles for achieving compliance
§ 31:101	Complaints to the Secretary
§ 31:102	Compliance reviews
§ 31:103	Responsibilities of covered entities and business associates
§ 31:104	Secretarial action regarding complaints and compliance reviews
§ 31:105	Investigational subpoenas and inquiries
§ 31:106	Investigational inquiries are non-public
	investigational proceedings conducted by the Secretary
§ 31:107	Refraining from intimidation or retaliation
§ 31:108	Basis for a civil money penalty
§ 31:109	Amount of a civil money penalty
§ 31:110	Violations of an identical requirement or prohibition
§ 31:111	Factors considered in determining the amount of a civil money penalty
§ 31:112	Affirmative defenses
§ 31:113	Waiver
§ 31:114	Limitations
§ 31:115	Authority to settle
§ 31:116	Penalty not exclusive
§ 31:117	Notice of proposed determination
§ 31:118	Failure to request a hearing
§ 31:119	Collection of penalty
§ 31:120	Notification of the public and other agencies
§ 31:121	Selected recent enforcement matters—In the Matter of Providence Health & Services

§ 31:122	—In the Matter of CVS Pharmacy
§ 31:123	—In the Matter of Rite Aid
§ 31:124	—In the Matter of Management Services
· ·	Organization Washington, Inc.
§ 31:125	—In the Matter of Cignet Health Center
§ 31:126	—In the Matter of the General Hospital Corporation
· ·	and Massachusetts General Physicians
	Organization, Inc.
§ 31:127	—In the Matter of the Regents of the University of
	California, on behalf of the University of California
	at Los Angeles
§ 31:128	—In the Matter of BCBST
§ 31:129	—In the Matter of Phoenix Cardiac Surgery, P.C.
§ 31:130	—In the Matter of Alaska Department of Health and
	Human Services (DHSS)
§ 31:131	—In the Matter of Massachusetts Eye and Ear
	Infirmary
§ 31:132	—In the Matter of Hospice of North Idaho
§ 31:133	—In the Matter of Idaho State University
§ 31:134	—In the Matter of Shasta Regional Medical Center
§ 31:135	—In the Matter of WellPoint, Inc.
§ 31:136	—Affinity Health Plan, Inc.
§ 31:137	—Adult & Pediatric Dermatology, P.C.
§ 31:138	—In the Matter of Skagit County, Washington
§ 31:139	—In the Matter of QCA Health Plan, Inc.
§ 31:140	—In the Matter of Concentra Health Services
§ 31:141	—In the Matter of Columbia University in the City
	of New York
§ 31:142	—In the Matter of the New York and Presbyterian
	Hospital
§ 31:143	—In the Matter of Parkview Health System, Inc.
§ 31:144	—In the Matter of Anchorage Community Mental
	Health Services, Inc.
§ 31:145	—In the Matter of Cornell Prescription Pharmacy
§ 31:146	—In the Matter of St. Elizabeth's Medical Center
§ 31:147	—In the Matter of Cancer Care Group
§ 31:148	—In the Matter of Lahey Clinic Hospital, Inc.
§ 31:149	—In the Matter of Triple-S Management
	Corporation
§ 31:150	—In the Matter of the Board of Regents of the
	University of Washington
§ 31:151	—In the Matter of Lincare, Inc.
§ 31:152	—In the Matter of P.T., Pool & Land Physical
0.04 177	Therapy, Inc.
§ 31:153	—In the Matter of North Care Memorial Health
	Care

§ 31:154	—In the Matter of Feinstein Institute for Medical Research
§ 31:155	—In the Matter of Raleigh Orthopaedic Clinic, P.A.
§ 31:156	—In the Matter of New York and Presbyterian
8 91.190	Hospital
§ 31:157	—In the Matter of Catholic Health Care Services
§ 31:158	—In the Matter of Oregon Health & Science University
§ 31:159	—In the Matter of the University of Mississippi
§ 31:160	—In the Matter of Advocate Health Care Network
§ 31:161	—In re the Matter of Care New England Health System
§ 31:162	—In the Matter of St. Joseph Health
§ 31:163	—In the Matter of University of Massachusetts
, 01,100	Amherst
§ 31:164	—In the Matter of Presence Health Network
§ 31:165	—In the Matter of MAPFRE Life Insurance
Ü	Company of Puerto Rico
§ 31:166	—In the Matter of Children's Medical Center of
	Dallas
§ 31:167	—In the Matter of South Broward Hospital District d/b/a Memorial Healthcare System
§ 31:168	—In the Matter of Metro Community Provider
Ü	Network
§ 31:169	—In the Matter of Children's Digestive Health, S.C.
§ 31:170	—In the Matter of CardioNet, Inc.
§ 31:171	—In the Matter of Memorial Herman Health
	System
§ 31:172	—In the Matter of St Luke's-Roosevelt Hospital
	Center Inc.
C.	HEARINGS
C.	HEARINGS
§ 31:173	Applicability
§ 31:174	Hearing before an ALJ
§ 31:175	Rights of the parties
§ 31:176	Authority of the ALJ
§ 31:177	Ex parte contacts with the ALJ
§ 31:178	Prehearing conferences
§ 31:179	Authority to settle
§ 31:180	Discovery
§ 31:181	Exchange of witness lists, witness statements, and
	exhibits
§ 31:182	Subpoenas for attendance at hearing
§ 31:183	Fees
§ 31:184	Form, filing, and service of papers

\$ 31:185 \$ 31:186 \$ 31:187 \$ 31:188 \$ 31:189 \$ 31:190 \$ 31:191 \$ 31:192 \$ 31:193 \$ 31:194 \$ 31:195 \$ 31:196	Computation of time Motions Sanctions Collateral estoppel The hearing Statistical sampling Witnesses Evidence The record Post hearing briefs ALJ's decision Appeal of the ALJ's decision
§ 31:197	Stay of the Secretary's decision
§ 31:198	Harmless error
D.	SECURITY
§ 31:199	Statutory basis for security and privacy regulations
§ 31:200	Applicability of regulations
§ 31:201	Organizational requirements—Hybrid entities
§ 31:202	Safeguard requirements for affiliated covered entities
§ 31:203	Documentation
§ 31:204	Relationship to other portions of the regulations
§ 31:205	Applicability
§ 31:206	In general
§ 31:207	Security management process
§ 31:208	—Risk analysis
§ 31:209	—Risk management
§ 31:210	—Sanction policy
§ 31:211	—Information system activity review
§ 31:212	Assigned security responsibility
§ 31:213	Workforce security
§ 31:214	—Authorization and/or supervision
§ 31:215	—Workforce clearance procedure
§ 31:216	—Termination procedures
§ 31:217	Information access management
§ 31:218	—Isolating health care clearinghouse functions
§ 31:219	—Access authorization
§ 31:220	—Access establishment and modification
§ 31:221	—Access establishment and modification
§ 31:222	implementation Security awareness and training
§ 31:222 § 31:223	—Security awareness and training —Security reminders
§ 31:223 § 31:224	—Protection from malicious software
8 91:774	—r rotection from mancious software

§ 31:225	—Log-in monitoring
§ 31:226	—Password management
§ 31:227	Security incident procedures
§ 31:228	Contingency plan
§ 31:229	—Data backup plan
§ 31:230	—Disaster recovery plan
§ 31:231	—Emergency mode operation plan
§ 31:232	—Testing and revision procedures
§ 31:233	—Applications and data criticality analysis
§ 31:234	Evaluation
§ 31:235	Business associate contracts and other agreements
§ 31:236	Physical safeguards
§ 31:237	Device and media controls
§ 31:238	Technical safeguards
§ 31:239	Organizational requirements
§ 31:240	—Requirements for group health plans
§ 31:241	Policies and procedures
E.	PRIVACY
§ 31:242	Application of privacy provisions and penalties to business associates
§ 31:243	
§ 31.243 § 31:244	Application to health care clearinghouses
-	Application to health care clearinghouses
§ 31:245	Exceptions
§ 31:246	Uses and disclosures of deidentified protected health information
§ 31:247	Deidentification guidance
§ 31:248	Use and disclosure of genetic information for underwriting purposes
§ 31:249	Sale of protected health information
§ 31:250	Minimum necessary
§ 31:251	Uses and disclosures of PHI subject to an agreed upon restriction
§ 31:252	Creation of not individually identifiable information
§ 31:253	Disclosures to business associates
§ 31:254	Deceased individuals
§ 31:255	Personal representatives
§ 31:256	Adults and emancipated minors
§ 31:257	Deceased individuals
§ 31:258	Confidential communications
§ 31:259	Abuse, neglect, endangerment situations
§ 31:260	Processing and disclosures with notice
§ 31:261	Disclosures by whistleblowers and workforce
, 01,201	member crime victims

§ 31:262	Substance use records
§ 31:263	Reproductive records
§ 31:264	Gender-affirming care
173	LIGEG AND DIGGLOGUEG
F.	USES AND DISCLOSURES
§ 31:265	Business associate contracts
§ 31:266	Other arrangements for business associate agreements
§ 31:267	Business associate contracts with subcontractors
§ 31:268	Requirements for group health plans
§ 31:269	Uses and disclosures by group health plans
§ 31:270	Requirements for a covered entity with multiple covered functions
§ 31:271	Uses and disclosures to carry out treatment, payment, or health care operations
§ 31:272	—Treatment, payment, or health care operations
§ 31:273	Uses and disclosures for which an authorization is required
§ 31:274	—Sale of protected health information
§ 31:275	—Valid authorization
§ 31:276	—Other requirements of authorizations
§ 31:277	Uses and disclosures requiring an opportunity for the individual to agree or to object
$\S 31:278$	Opportunity to object—Emergency circumstances
§ 31:279	Uses and disclosures for involvement in the individual's care and notification purposes
§ 31:280	Uses and disclosures for disaster relief purposes
§ 31:281	Uses and disclosures when the individual is deceased
§ 31:282	Uses and disclosures for which an authorization or opportunity to agree or object is not required
§ 31:283	—Uses and disclosures for public health activities
§ 31:284	 Disclosures about victims of abuse, neglect, or domestic violence
§ 31:285	—Uses and disclosures for health oversight activities
§ 31:286	—Disclosures for judicial and administrative proceedings
§ 31:287	——Defining satisfactory assurances
\$ 31:288	—Disclosures for law-enforcement purposes
\$ 31:289	— —Limited information for identification and
	location purposes
§ 31:290	— Victims of a crime
§ 31:291	——Decedents
§ 31:292	——Crime on premises

clviii

§ 31:293	——Reporting crime in emergencies
§ 31:294	—Uses and disclosures about decedents
§ 31:295	—Uses and disclosures for cadaveric organ, eye, or
	tissue donation purposes
§ 31:296	—Uses and disclosures for research purposes
§ 31:297	 — Documentation of waiver approval
§ 31:298	—Uses and disclosures to avert a serious threat to
	health or safety
§ 31:299	—Uses and disclosures for specialized government
	functions—Military and veterans activities
§ 31:300	——Separation or discharge from military service
§ 31:301	——Foreign military personnel
§ 31:302	——National security and intelligence activities
§ 31:303	——Protective services for the President and others
§ 31:304	— — Medical suitability determinations
§ 31:305	——Correctional institutions and other law-
6 01 000	enforcement custodial situations
§ 31:306	——Covered entities that are government programs
8 91.907	providing public benefits
§ 31:307	—National Instant Criminal Background Check System.
§ 31:308	—Disclosures for workers' compensation
§ 31:309	Other requirements relating to uses and disclosures
8 91.909	of protected health information—Deidentified data
§ 31:310	—Reidentification
§ 31:311	—Minimum necessary uses of PHI
§ 31:312	—Minimum necessary disclosures of PHI
§ 31:313	—Minimum necessary requirements for PHI
§ 31:314	—Limited data set
§ 31:315	—Uses for fundraising
§ 31:316	—Uses and disclosures for underwriting and related
\$ 01.010	purposes
§ 31:317	-Verification requirements
§ 31:318	—Verification
§ 31:319	Notice of privacy practices for protected health
3 01.010	information—Right to notice of privacy practices
	for PHI
§ 31:320	—Requirements for electronic notice
§ 31:321	—Joint notice by separate covered entities
§ 31:322	Rights to request privacy protection for PHI
§ 31:323	—Confidential communications requirements
§ 31:324	Access of individuals to PHI
§ 31:325	—Review of denial of access
§ 31:326	—Requests for access and timely action
§ 31:327	—Providing access
2 01.071	1 TOVIUME access

§ 31:328	—Time and manner of access
§ 31:329	—Denial of access
§ 31:330	Amendment of PHI
§ 31:331	—Actions on notices of amendment
§ 31:332	—Documentation
§ 31:333	Accounting of disclosures of protected health information
§ 31:334	—Content of the accounting
§ 31:335	—Providing the accounting
§ 31:336	—Documentation
§ 31:337	Administrative requirements—Personal designation
§ 31:338	—Safeguards
§ 31:339	—Complaints to the covered entity
§ 31:340	—Documentation of complaints
§ 31:341	—Mitigation
§ 31:342	—Refraining from intimidating or retaliatory acts
§ 31:343	—Waiver of rights
§ 31:344	—Policies and procedures
§ 31:345	——Changes to privacy practices stated in the
	notice
§ 31:346	——Changes to other policies or procedures
§ 31:347	—Documentation
§ 31:348	—Retention period
§ 31:349	—Group health plans
§ 31:350	Transition provisions—Use and disclosure of information
§ 31:351	—Effect of prior contracts or other arrangements with business associates
§ 31:352	Compliance dates for initial implementation of the privacy standards
§ 31:353	Public records laws and HIPAA protections
§ 31:354	State Medicaid restrictions and HIPAA
§ 31:355	De-identified information
§ 31:356	Disclosures to business associates
§ 31:357	Restrictions and exceptions
§ 31:358	HIPAA and ex parte communications between physicians

III. PROMOTION OF HEALTH INFORMATION TECHNOLOGY

§ 31:359	Office of the National Coordinator for Health
	Information Technology
§ 31:360	Certification of HIT
§ 31:361	Reports and publications

§ 31:362	Detailing of federal employees
§ 31:363	Appointment of Chief Privacy Officer
§ 31:364	HIT Policy Committee
§ 31:365	HIT Standards Committee
§ 31:366	Role of National Coordinator in the HIT Standards Committee
§ 31:367	Process for adoption of endorsed recommendations
§ 31:368	Adoption of standards, implementation specifications, and certification criteria
§ 31:369	Application and use of adopted standards and implementation specifications by federal agencies
§ 31:370	Voluntary application and use of adopted standards and implementation specifications
§ 31:371	Federal health information technology
§ 31:372	Transitions
§ 31:373	Relation to HIPAA privacy and security law
§ 31:374	Incentives for the use of health information technology
§ 31:375	Immediate funding
§ 31:376	Health information technology implementation assistance—Health information technology extension program
§ 31:377	—Health information technology research center
§ 31:378	Health information technology regional extension centers
§ 31:379	—Application review
§ 31:380	State grants to promote health information technology
§ 31:381	Required match of state grants
§ 31:382	Requirement of a strategic plan
§ 31:383	Use of funds
§ 31:384	Guidance and regulations
§ 31:385	Private sector contributions
§ 31:386	Matching requirements
§ 31:387	Effective date
§ 31:388	Demonstration program to integrate information technology into clinical education
§ 31:389	Financial support, evaluation, and reports
§ 31:390	Information technology professionals in health care
§ 31:391	General grant and loan provisions
§ 31:392	Private right of action—Availability
§ 31:393	First Amendment and restrictions on health data
§ 31:394	Prior restraints and private information
§ 31:395	Enforcement

IV. PATIENT SAFETY AND QUALITY IMPROVEMENT ACT

§ 31:396	Overview of Act
§ 31:397	Patient safety databases
§ 31:398	Patient safety organizations
§ 31:399	Confidentiality provisions
§ 31:400	Constitutional rights of privacy in certain medical records; disclosure to disciplinary boards
§ 31:401	Continued protection of information
§ 31:402	Limitations on disclosures to providers
§ 31:403	Limitations on adverse employment actions
§ 31:404	Civil enforcement
§ 31:405	Regulations

CHAPTER 32. STATE HEALTH INFORMATION AND PRIVACY AND SECURITY

I. INTRODUCTION

- § 32:1 Importance of health privacy
- § 32:2 No duty on pharmacists related to identity theft

II. SPECIFIC STATE LAWS

A. ALASKA

§ 32:3 Electronic medical records

B. ARIZONA

- § 32:4 Communicable diseases—Confidentiality of information
- § 32:5 —Release of information to government entities
- § 32:6 —Form of authorization
- § 32:7 —Restrictions upon redisclosure
- § 32:8 —Applicability to death certificates
- § 32:9 —Disclosure to at-risk third parties
- § 32:10 —Inapplicability to entities governed by title 20
- § 32:11 —Exceptions for investigations
- $\S 32:12$ —Disclosure pursuant to court order
- § 32:13 —Criminal enforcement
- § 32:14 —Civil penalties

C. CALIFORNIA

§ 32:15 Disclosures of medical information

clxii

§ 32:16	—Application of chapter
§ 32:17	—Restrictions and required disclosures
§ 32:18	—Permitted disclosures
§ 32:19	——Disclosures for diagnosis or treatment
§ 32:20	——Disclosures for billing
§ 32:21	——Disclosures to committees
§ 32:22	— —Disclosures to the coroner and educational
0	institutions
§ 32:23	— —Employment-related health care services
§ 32:24	——Disclosures to insurers
§ 32:25	——Disclosures to a probate investigator and organ
	procurement organizations
§ 32:26	— —Disclosures based upon federal law
§ 32:27	— —Anonymous data
§ 32:28	——Disclosure to disease management programs
§ 32:29	——Disclosure under other laws
§ 32:30	——Disclosure via ethical conduct
§ 32:31	—Other disclosures
§ 32:32	—Limitations upon disclosures
§ 32:33	—Corporations that maintain medical information
§ 32:34	—Destruction of records
§ 32:35	—Disclosures by pharmaceutical companies
§ 32:36	—Treatment with psychotherapist
§ 32:37	 —Inapplicability to use of information by law
	enforcement
§ 32:38	—New restrictions on confidentiality effective 2015
§ 32:39	—Enforcement
§ 32:40	—California Medical Information Act (CMIA)
0.00.44	litigation
§ 32:41	—Entity for enforcement
§ 32:42	—California data security
§ 32:43	—Creation of new entity
§ 32:44	—Enforcement under section 1280.1 of the Health
0.00.45	and Safety Code
§ 32:45	—Restrictions on unauthorized access
§ 32:46	—Reporting obligations
§ 32:47	—Enforcement
§ 32:48	—Enforcement and regulations
§ 32:49	—Restrictions on California government employees
§ 32:50	AIDS status—General provisions
§ 32:51	—Restrictions and enforcement
§ 32:52	—Disclosure to health care providers
§ 32:53	—Preclusion of testing without consent
§ 32:54	—New additions regarding AIDS testing
§ 32:55	—Disclosures without consent

§ 32:56	Requests by businesses for medical information—Oral requests
§ 32:57	—Written requests
§ 32:58	—Exemptions
§ 32:59	Disclosure of medical information to specified individuals
§ 32:60	Disclosure of medical information for disaster relief efforts
§ 32:61	Disclosure of medical information—Public disclosures of limited information
§ 32:62	Online privacy for reproductive health services providers
§ 32:63	—Soliciting or trading in names and private information
§ 32:64	—Exemptions for interactive computer services
D.	CONNECTICUT
§ 32:65	Confidentiality of pharmacy records
§ 32:66	Pharmacy rewards
E.	
§ 32:67	Ownership and control of patient records
§ 32:68	Exceptions
§ 32:69	Transfer of records
§ 32:70	Enforcement
§ 32:71	Fees
F.	HAWAII
§ 32:72	Restrictions on Pharmacy Benefits Managers and marketing
G.	MASSACHUSETTS
§ 32:73	Commonwealth of Massachusetts v. South Shore Hospital, Inc
§ 32:74	Commonwealth of Massachusetts v. Beth Israel Deaconess Medical Center, Inc.
H.	MICHIGAN
§ 32:75	Medical records—Records retention
§ 32:76	—Destruction of records
§ 32:77	—Enforcement
-	—Ownership
§ 32:79	Health facilities—Patient records

clxiv

_	32:80 32:81	—Public record status—Disciplinary actions against health professionals
		Reporting requirements
	32:82	—Exemption for peer review documents
	32:83	—Patient records—Contracting with third parties
	32:84	— — Termination of operations
	32:85	——Ownership of medical records
8	32:86	— —Enforcement
	I.	NEW HAMPSHIRE
§	32:87	Pharmacy disclosures—Restrictions
§	32:88	 — New Hampshire and Maine laws held unconstitutional
§	32:89	—Disclosures by clearinghouses
_	32:90	Use and disclosure of PHI—Marketing and fundraising
_	32:91	—Enforcement
	32:92	—Breach notice requirements
Ş	32:93	Use and Disclosure of PHI—Health information
§	32:94	organization —Unauthorized disclosure
	J.	NORTH DAKOTA
	32:95 32:96	Health Information Organizations Voluntary participation in the health information organization—Prohibition on withholding care or benefits
	K.	TENNESSEE
§	32:97	Litigation protective orders
	L.	TEXAS
§	32:98	Medical records privacy—Health law
§	32:99	—Applicability
§	32:100	—Sovereign immunity
	32:101	—Covered entity
§	32:102	—Duties of the executive commissioner
	32:103	—Protected health information not public
_	32:104	—Exemptions—Partial exemption
§	32:105	——Processing payment transactions by financial
		institutions
-	32:106	——Nonprofit agencies
Š	32:107	— —Workers' compensation

§ 32:108	— —Employee benefit plan
§ 32:109	— —American Red Cross
§ 32:110	 — Information relating to offenders with mental
	impairments
§ 32:111	——Education records
§ 32:112	——Crime victim compensation
§ 32:113	—Access to and use of protected health
	information—Training required
§ 32:114	——Consumer access to EHR
§ 32:115	— —Consumer information website
§ 32:116	— —Consumer complaint report by Attorney
	General
§ 32:117	—Prohibited acts—Reidentified information
§ 32:118	——Marketing uses of information
§ 32:119	——Sale of protected health information prohibited;
	exceptions
§ 32:120	Notice and authorization required for electronic
	disclosure of protected health information;
	Exceptions
§ 32:121	—Enforcement—Remedies
§ 32:122	— —Disciplinary action
§ 32:123	— Exclusion from state programs
§ 32:124	— — Mitigation
§ 32:125	— —Audits of covered entities
§ 32:126	——Funding
M.	VERMONT
§ 32:127	Restrictions on prescription drug marketing
§ 32:128	Enforcement
, 02.120	Inforcement .
N.	WISCONSIN
§ 32:129	Healthcare records—Access
§ 32:130	—Additional restrictions
§ 32:131	—Preservation or destruction of patient health care
	records
§ 32:132	—Preservation or destruction of patient health care
	record—Exceptions
§ 32:133	—Applicability
§ 32:134	—Contents of certain patient health care records
§ 32:135	—Violations related to patient health care records—
	Enforcement
§ 32:136	— —Exceptions
§ 32:137	—Additional restrictions contained in the State Alcohol, Drug Abuse, Developmental Disabilities
	and Mental Health Act

Table of Contents

§ 32:138 —Confidentiality of patient health care records
§ 32:139 — Other exceptions
§ 32:140 — Other reports made without informed consent
§ 32:141 — Redisclosure
§ 32:142 Willfulness under Wisconsin's Medical Privacy Law

CHAPTER 33. GENETIC PRIVACY

I. INTRODUCTION

§ 33:1 Overview

II. FEDERAL STATUTES

§ 33:2	Genetic privacy
§ 33:3	Genetic nondiscrimination in health insurance—
	Amendments to Employee Retirement Income
	Security Act Of 1974
§ 33:4	——Limitations on genetic testing
§ 33:5	— Prohibition on collection of genetic information
§ 33:6	——Scope of application
§ 33:7	— Genetic information regarding a fetus or embryo
§ 33:8	— —ERISA enforcement
§ 33:9	— —Rulemaking
§ 33:10	— Effective date
§ 33:11	—Amendments to the Public Health Service Act—
	Discrimination in group premiums based upon
	genetic information
§ 33:12	——Prohibition on collection of genetic information
§ 33:13	——Restrictions on the collection of genetic
	information
§ 33:14	——Application of certain requirements
§ 33:15	——Applications to genetic information of a fetus or
	embryo
§ 33:16	 —Enforcement authority relating to genetic
	discrimination
§ 33:17	——Prohibition of health discrimination on the basis
	of genetic information
§ 33:18	——Prohibition on the use of genetic information in
	setting premium rates
§ 33:19	——Prohibition on genetic information as preexisting
	condition
§ 33:20	——Limitation on requesting or requiring genetic
	testing
§ 33:21	——Research exception
§ 33:22	——Prohibition on collection of genetic information

 ${\it clxvii}$

§ 33:23	——Enforcement
§ 33:24	— —Elimination of option of nonfederal governmental
	plans to be excepted from requirements concerning genetic information
§ 33:25	Regulations—Initial timing
§ 33:26	Genetic nondiscrimination in health insurance—
ş 00.20	Amendments to the Public Health Service Act—
6 00 07	Effective date
§ 33:27	—Amendments to the Internal Revenue Code of 1986—No group-based discrimination on basis of
e 99.00	genetic information
§ 33:28	— —Restrictions on the collection of genetic information
§ 33:29	——Scope of application
§ 33:30	— —Scope of application — —Enforcement
§ 33:31	——Regulations and effective date
§ 33:32	—Amendments to Title XVII of the Social Security
3 00.02	Act relating to medigap
§ 33:33	——Limitations on genetic testing and genetic
0	information
§ 33:34	— — Prohibition on collection of genetic information
§ 33:35	——Requirements of group benefits; core group
	benefits; uniform outline of coverage
§ 33:36	 —Effective date and transiting provisions
§ 33:37	—Privacy and confidentiality—Amendments to HIPAA regulations—Enforcement
§ 33:38	Genetic nondiscrimination in employment—
	Employment discrimination
§ 33:39	—Improper acquisition of genetic information
§ 33:40	—Employment agency practices
§ 33:41	—Labor practices
§ 33:42	—Training programs
§ 33:43	—Confidentiality of genetic information
§ 33:44	—Enforcement
§ 33:45	—Prohibition on retaliation
§ 33:46	-No cause of action based upon disparate impact
§ 33:47	—Formation of a commission to study disparate
	impact
§ 33:48	—Medical information that is not genetic information
§ 33:49	—Additional regulations
§ 33:50	—Rules of construction

III. SELECTED REGULATIONS

§ 33:51 Group health plans and genetic information— Statutory basis

§ 33:52	—Preexisting conditions
§ 33:53	—Discrimination against participants and
	beneficiaries based upon a health factor
§ 33:54	—Limitations on group health plans
§ 33:55	—Limitation on requesting or requiring genetic
	testing
§ 33:56	—Prohibitions on the collection of genetic information
§ 33:57	—Collection prior to or in connection with enrollment
§ 33:58	—Exception
§ 33:59	—Additional rules for group health plans
§ 33:60	—Additional restrictions on group health plans and health insurers
§ 33:61	Federal DNA collection laws
§ 33:62	—Collection and use of DNA identification information
§ 33:63	—Additional limitations
§ 33:64	—Enforcement
§ 33:65	—Privacy protection standards
§ 33:66	—Expungement of records
§ 33:67	—Privacy protections
IV. S'	TATE LAW
A.	ALASKA
§ 33:68	Genetic privacy
§ 33:69	Civil enforcement
§ 33:70	Criminal enforcement
ъ	A DIGONA
В.	ARIZONA
§ 33:71	Genetic privacy
C	A DIZANICA C
C.	ARKANSAS
§ 33:72	Genetic privacy
D.	CALIFORNIA
§ 33:73	Genetic privacy
E.	COLORADO
§ 33:74	Genetic privacy
§ 33:75	Application to insurers
§ 33:76	Civil enforcement

§ 33:77	Restrictions on genetic testing
G.	DELAWARE
§ 33:78	Genetic privacy
§ 33:79	Retention of samples of genetic information
§ 33:80	Access to genetic information
§ 33:81	Conditions for disclosure to third parties
§ 33:82	Scope of application
§ 33:83	Parental rights
§ 33:84	Enforcement
Н.	FLORIDA
§ 33:85	Genetic privacy
3 00.00	deficite privacy
I.	GEORGIA
§ 33:86	Genetic testing
§ 33:87	Civil enforcement
J.	HAWAII
§ 33:88	Genetic privacy
K.	IDAHO
§ 33:89	Genetic privacy
§ 33:90	Restrictions on employers
§ 33:91	
§ 33:92	
Τ.	ILLINOIS
§ 33:93	Genetic privacy
§ 33:94	Exceptions
§ 33:95	Liga of ganatia tagting by amplayang
	Use of genetic testing by employers
§ 33:96	Disclosure of information
§ 33:96	Disclosure of information
§ 33:96 § 33:97	Disclosure of information Civil enforcement
§ 33:96 § 33:97 M.	Disclosure of information Civil enforcement IOWA
§ 33:96 § 33:97 M. § 33:98	Disclosure of information Civil enforcement IOWA Restrictions on genetic testing
§ 33:96 § 33:97 M. § 33:98 § 33:99	Disclosure of information Civil enforcement IOWA Restrictions on genetic testing Additional restrictions

F. CONNECTICUT

TABLE OF	Contents
§ 33:102	Exceptions
N.	KANSAS
§ 33:103	Use of genetics tests in employment
O.	LOUISIANA
§ 33:104 § 33:105 § 33:106 § 33:107	Other restrictions Exemptions
P.	MAINE
§ 33:108 § 33:109	Employment discrimination Discrimination on the basis of genetic information or testing
Q.	MARYLAND
§ 33:110 § 33:111	
R.	MASSACHUSETTS
§ 33:112 § 33:113 § 33:114	
S.	MICHIGAN
§ 33:115	Genetic privacy
Т.	MINNESOTA
§ 33:116 § 33:117 § 33:118 § 33:119	—Exceptions Genetic testing in employment
U.	MISSOURI
§ 33:120	Genetic privacy
V.	NEBRASKA

§ 33:121 Restrictions on genetic testing

W. NEVADA § 33:122 Genetic privacy

§ 33:123 § 33:124 § 33:125	Disclosure of genetic information Genetic information—Procedure to obtain consent —Enforcement
X.	NEW HAMPSHIRE
§ 33:126 § 33:127 § 33:128 § 33:129	Genetic information—General restrictions Restrictions upon use in employment Genetic testing in health insurance Civil enforcement
Y.	NEW JERSEY
§ 33:130 § 33:131 § 33:132 § 33:133 § 33:134 § 33:135 § 33:136 § 33:137	Genetic privacy —Data destruction requirements —Disclosure of identity —Notice to person tested —Regulations —Enforcement Genetic information—Insurance restrictions —Employment discrimination
Z.	NEW MEXICO
§ 33:138 § 33:139 § 33:140 § 33:141	Genetic privacy Genetic discrimination Rights of retention Enforcement
AA.	NEW YORK
§ 33:142	Genetic information—Restrictions on employment discrimination
§ 33:143 § 33:144 § 33:145 § 33:146	Genetic tests—New York Civil Rights Law —Confidentiality —Exceptions —Enforcement
BB.	NORTH CAROLINA
§ 33:147	Restrictions on genetic testing
CC.	OKLAHOMA
§ 33:149	Genetic nondiscrimination in employment —Enforcement —Exceptions

clxxii

DD.	OREGON
§ 33:151 § 33:152 § 33:153 § 33:154	Genetic privacy —Rights of individuals —Inspection right —Disclosure of biological specimen or clinical individually identifiable health information
§ 33:155 § 33:156 § 33:157	—Disclosure of genetic information —Enforcement —Other requirements
EE.	RHODE ISLAND
§ 33:158	Genetic privacy
FF.	SOUTH CAROLINA
§ 33:159 § 33:160 § 33:161	_
GG.	SOUTH DAKOTA
§ 33:162 § 33:163	Genetic testing and insurance Genetic information and employers
нн.	TEXAS
§ 33:164 § 33:165 § 33:166	Employment discrimination—Genetic privacy —Confidentiality of genetic information —Disclosure of genetic information with authorization
§ 33:167	—Disclosure of genetic test results to the individual
§ 33:168	—Destruction of genetic samples
§ 33:169	Licensing authorities—Uses of genetic information
§ 33:170	—Destruction of genetic material
§ 33:171	—Disclosure of genetic test results
§ 33:172	—Confidentiality of genetic information
§ 33:173	——Exceptions
§ 33:174	—Disclosure of genetic information with authorization
§ 33:175	—Disclosure of genetic information—Enforcement
§ 33:176	Insurance restrictions and genetic privacy
§ 33:177	—Improper use of tests
§ 33:178	—Testing related to pregnancy
§ 33:179	—Destruction of genetic materials
§ 33:180	—Disclosure of genetic test results
	_

§ 33:182	—Confidentiality of genetic information —Exceptions
§ 33:183	—Disclosure of genetic information with authorization
§ 33:184	
II.	UTAH
§ 33:185	Genetic privacy
§ 33:186	Restrictions on employers
§ 33:187	Restrictions upon health insurers
§ 33:188	Enforcement
JJ.	VERMONT
§ 33:189	Genetic privacy
§ 33:190	Genetic testing and employers
§ 33:191	Genetic testing and insurance
§ 33:192	Enforcement
KK.	VIRGINIA
§ 33:193	Genetic privacy
	WASHINGTON
§ 33:194	Genetic privacy
§ 33:195	Genetic privacy litigation
MM	. WISCONSIN
§ 33:196	Use of genetic testing in employment situations
§ 33:197	Exceptions
CHAP	ΓER 34. FEDERAL TRADE
_	IISSION ACT AND ENFORCEMENT
	R THE ACT
§ 34:1	The FTC—A historical perspective
§ 34:2	The history of privacy enforcement
§ 34:3	The FTC's jurisdiction
§ 34:4	Understanding the theoretical basis of the FTC
	privacy enforcement
§ 34:5	Understanding Section 5
§ 34:6	Unfair or deceptive acts or practices—Rulemaking authority
§ 34:7	Deception
clxxiv	

§ 34:8	—Likely to mislead
§ 34:9	—The act or practice must be considered from the
	perspective of the reasonable consumer
§ 34:10	—Materiality
§ 34:11	—Summarizing the deception elements
§ 34:12	—Deception and notice and choice models of
	enforcement
§ 34:13	Unfairness—Authority
§ 34:14	—The FTC's December 1980 statement regarding
	unfairness
§ 34:15	—Consumer injury
§ 34:16	—Violation of public policy
§ 34:17	—Unethical or unscrupulous conduct
§ 34:18	—Distilling the Unfairness Statement
§ 34:19	—Unfairness and harm-based enforcement models
§ 34:20	—Accusearch and unfairness
§ 34:21	Individual liability
§ 34:22	Relief—Overview
§ 34:23	—Relief available under Section 53(b)
§ 34:24	—Remedies
§ 34:25	—FTC injunction limitations
§ 34:26	—Active concert and injunctive relief
§ 34:27	Department of Justice and Federal Trade
	Commission: Antitrust policy statement on sharing
6 0 4 00	of cybersecurity information
§ 34:28	FTC—Privacy agenda
§ 34:29	Privacy and security cases brought by FTC—Section
	5 cases—In the Matter of Geocities—Consumer
§ 34:30	privacy ——In the Matter of Liberty Financial Companies,
8 94.90	Inc.—Consumer privacy
§ 34:31	— FTC v. Rennert—Data security
§ 34:32	——FTC v. Toysmart.com—Consumer privacy
§ 34:33	——In the Matter of Eli Lilly and Company—Data
3 04.00	security
§ 34:34	——In the Matter of ReverseAuction.com, Inc.
§ 34:35	——In the Matter of Microsoft Corporation—Data
, 01.00	security
§ 34:36	— —In the Matter of The National Research Center
	for College and University Admissions, Inc.—
	Consumer privacy
§ 34:37	— —In the Matter of Educational Research Center
	of America, Inc.—Consumer privacy
§ 34:38	— —In the Matter of Guess?, Inc.—Data security
§ 34:39	— —In the Matter of MTS, Inc., d/b/a Tower
	Records/Books/Video—Data security

§ 34:40 § 34:41	 — Bonzi Software, Inc.—Consumer privacy — In the Matter of Gateway Learning—Consumer
§ 34:42	privacy ——In the Matter of Sunbelt Lending Services, Inc.—Data security
§ 34:43	——In the Matter of Nationwide Mortgage Group, Inc., and John D. Eubank—Data security
§ 34:44	— —In the Matter of Petco Animal Supplies—Data security
§ 34:45	— —In the Matter of Vision I Properties, LLC— Data security
§ 34:46	— —In the Matter of BJ's Wholesale Club, Inc.— Data security
§ 34:47	——In the Matter of Superior Mortgage Corp.— Data security
§ 34:48	——In the Matter of CardSystems Solutions, Inc.— Data security
§ 34:49	— —In the Matter of DSW, Inc.—Data security
-	
§ 34:50	——In the Matter of Nations Title Agency, Inc.—
00451	Data security
§ 34:51	——FTC. v. Integrity Security & Investigation
	Services, Inc. et al., (E.D. VA 2006)—Consumer
0 - 1	privacy
§ 34:52	— —USA v. ChoicePoint Inc.—Data security
§ 34:53	——FTC. v. Information Search, Inc. and David Kacala, (N.D. Maryland 2007)—Consumer privacy
§ 34:54	— —In the Matter of Guidance Software, Inc.—Data
	security
§ 34:55	— —In the Matter of American United Mortgage
, 01.00	Company—Data security
§ 34:56	——In the Matter of Sony BMG Music
8 04.00	Entertainment—Consumer privacy
8 94.57	
§ 34:57	— — United States v. ValueClick, Inc.—Data security
§ 34:58	— —In the Matter of Goal Financial, LLC—Data
	security
§ 34:59	— —In the Matter of Life is Good Retail, Inc.—Data
	security
§ 34:60	— FTC. v. Action Research Group, Inc., et al.,
	(M.D. Fla. 2008)—Consumer privacy
§ 34:61	——In the Matter of Reed Elsevier Inc. and Seisint,
	Inc.—Data security
§ 34:62	— —In the Matter of The TJX Companies, Inc.—
0	Data security
§ 34:63	——In the Matter of Premier Capital Lending,
3 0 1.00	Inc.—Data security
§ 34:64	——In the Matter of Genica Corporation and
2 04.04	
	Computer Geeks.com—Data security

§ 34:65	— —USA v. Rental Research Services, Inc. & Lee Mikkelson, (Minn. 2009)—Data security
§ 34:66	——Federal Trade Commission v. Accusearch Inc., et al, (10th Cir. 2009)—Consumer privacy
§ 34:67	——In the Matter of CVS Caremark Corporation— Data security
§ 34:68	— —In the Matter of James B. Nutter & Company—Data security
§ 34:69	— —In the Matter of Sears Holdings Management Corporation—Consumer privacy
§ 34:70	— —In the Matter of Collectify LLC—Consumer privacy
§ 34:71	— —In the Matter of ExpatEdge Partners, LLC— Consumer privacy
§ 34:72	— —In the Matter of Directors Desk LLC (2010)— Consumer privacy
§ 34:73	— —In the Matter of Onyx Graphics—Consumer privacy
§ 34:74	— FTC. v. Gregory Navone, (Nev. 2008)—Data security
§ 34:75	— —In the Matter of Progressive Gaitways, Inc., (F.T.C. Nov. 9, 2009)—Consumer privacy
§ 34:76	— —In the Matter of World Innovators—Consumer privacy
§ 34:77	— — Federal Trade Commission v. ControlScan, Inc., (N.D. Ga. 2009)—Consumer privacy
§ 34:78	— — USA v. Direct Marketing Associates, Corp.
§ 34:79	——In the Matter of Dave & Busters, Inc., (May 20,
	2010)—Data security
§ 34:80	— —In the Matter of Twitter—Data security
§ 34:81	— —FTC v. EchoMetrix, Inc. (E.D. N.Y. 2010)— Consumer privacy
§ 34:82	— —In the Matter of Rite Aid Corporation (F.T.C. Nov. 12, 2010)—Data security
§ 34:83	— FTC v. Lifelock, Inc., et al.—Data security
§ 34:84	— —In the Matter of ACRAnet, Inc., (F.T.C. 2010)—Data security
§ 34:85	— —In the Matter of Fajilan and Associates, Inc. also d/b/a Statewide Credit Services, and Robert Fajilan (F.T.C. 2011)—Data security
§ 34:86	——In the Matter of SettlementOne Credit Corporation & Sackett National Holdings, Inc. (F.T.C. 2011)
§ 34:87	— —In the Matter of U.S. Search—Consumer privacy
§ 34:88	— — In the Matter of Google Inc. (F.T.C. 2011)— Consumer privacy

§ 34:89	— —In the Matter of Ceridian Corporation (F.T.C. 2011)—Data security
§ 34:90	——In the Matter of Chitika, Inc. (F.T.C. 2011)—
	Consumer privacy
§ 34:91	— —In the Matter of Lookout Services, Inc. (F.T.C. July 15, 2011)—Data security
§ 34:92	— —FTC v. RockYou, Inc.—Data security
§ 34:93	——In the Matter of Legacy Learning Systems, Inc.
8 04.55	and Smith
§ 34:94	— —In the Matter of Facebook Inc.—Consumer
	privacy
§ 34:95	— —In The Matter of MySpace LLC—Consumer
Ü	privacy
§ 34:96	— — In the Matter of ScanScout, Inc.—Consumer
9	privacy
§ 34:97	——In the Matter of Upromise, Inc.—Data security
§ 34:98	— United States of America v. Teletrack, Inc.
§ 34:99	— —USA v. Asset Acceptance, LLC
-	_ · · · · · · · · · · · · · · · · · · ·
§ 34:100	— USA v. Spokeo, Inc.
§ 34:101	——In the Matter of Franklin's Budget Car Sales,
8.04.100	Inc.—Data security
§ 34:102	— —In the Matter of EPN, Inc.—Data security
§ 34:103	——HireRight Solutions, Inc.
§ 34:104	——In the Matter of DesignerWare, LLC; Timothy Kelly, and Ronald P. Koller, individually and as officers of DesignerWare, LLC; Aspen Way Enterprises, Inc.; Watershed Development Corp.; Showplace, Inc., d/b/a Showplace Rent-to-Own; J.A.G. Rents, LLC, d/b/a ColorTyme; Red Zone, Inc., d/b/a ColorTyme; B. Stamper Enterprises, Inc., d/b/a Premier Rental Purchase; and C.A.L.M. Ventures, Inc., d/b/a Premier Rental Purchase—Consumer privacy
§ 34:105	— —In the Matter of Compete, Inc.—Data security
§ 34:106	— —In the matter of Epic Marketplace, Inc.— Consumer privacy
§ 34:107	— —In the Matter of CBR Systems, Inc.—Data security
§ 34:108	— —In the Matter of HTC America, Inc.—Data security
§ 34:109	— —In the Matter of PLS Financial Services, Inc., and The Payday Loan Store of Illinois, Inc. (N.D. Ill. 2012)—Data security
§ 34:110	— —In the Matter of Certegy Check Services, Inc. (D.D.C. 2013)
§ 34:111	——Challenges to jurisdiction—In re the Matter of
clxxviii	

	LabMD and In the Matter of Wyndham—Data security
§ 34:112	——In the Matter of TRENDnet, Inc.—Data security
§ 34:113	——In the Matter of Aaron's, Inc.—Consumer privacy
§ 34:114	——In the Matter of Goldenshores Technologies, LLC.—Consumer privacy
§ 34:115	— —In the Matter of Accretive Health, Inc.—Data security
§ 34:116	— —In the Matter of GeneLink Inc., and foru International Corporation—Data security
§ 34:117	——In the Matter of TeleCheck Services, Inc.
§ 34:118	——In the Matter of The Receivable Management Services Corporation; Charles River Laboratories International, Inc.; DataMotion, Inc.; DDC Laboratories, Inc., d/b/a DNA Diagnostics Center; Fantage; Level 3 Communications, LLC; Reynolds
	Consumer Products, Inc.; Apperian, Inc.; Baker Tilly Virchow Krause, LLP; BitTorrent, Inc.; Atlanta Falcons Football Club, LLC; PDB Sports, Ltd., d/b/a Denver Broncos Football Club; and Tennessee Football, Inc.—Safe Harbor
§ 34:119	— —In the Matter of GMR Transcription Services, Inc., (50th case in data security)—Data security
§ 34:120	— —In the Matter of Fantage.com, Inc.—Safe Harbor
§ 34:121	— —In the Matter of American Apparel, Inc.—Safe Harbor
§ 34:122	— —In the Matter of Credit Karma, Inc.—Data security
§ 34:123	— —In the Matter of Fandango, LLC—Data security
§ 34:124	— —In the Matter of Instant Checkmate
§ 34:125	——In the Matter of InfoTrack
§ 34:126	— —In the Matter of Snapchat, Inc.—Consumer privacy and security
§ 34:127	— — In the Matter of TRUSTe, Inc.—Consumer privacy
§ 34:128	——————————————————————————————————————
§ 34:129	——In the Matter of Craig Brittain—Consumer Privacy
§ 34:130	——In the matter of Jerk, LLC and John Fanning—Consumer Privacy
§ 34:131	——In the Matter of TES Franchising, LLC— Consumer Privacy/Safe Harbor
§ 34:132	——In the Matter of American International Mailing, Inc.—Consumer Privacy/Safe Harbor

§ 34:133	——In the Matter of Nomi Technologies, Inc.—
\$ 94.194	Consumer Privacy
§ 34:134	——In re the Matter of Golf Connect, LLC, Pinger, Inc., NAICS Association, LLC, Jubilant Clinsys,
	Inc., IOActive, Inc., Contract Logix, LLC, Forensics
	Consulting Solutions, LLC, Dale Jarrett Racing
	Adventure, SteriMed Medical Waste Solutions,
	California Skate-Line, Just Bagels Mfg., Inc., One
	Industries Corp., and Inbox Group, LLC.—
	Consumer Privacy/Safe Harbor
§ 34:135	——F.T.C. v. Wyndham—Data security
§ 34:136	— —In the Matter of Ruby Corp./Ashley Madison—
	Data security
§ 34:137	——In the Matter of Decusoft, Tru Communication,
6.04.100	Inc., and Md7, LLC—Privacy Shield
§ 34:138	— — In the Matter of Lenovo—Consumer privacy
§ 34:139	— —In the Matter of TaxSlayer, LLC—Consumer privacy
§ 34:140	— —In the Matter of Uber—Data security
§ 34:140	——In the Matter of Turn, Inc.—Consumer privacy
§ 34:141	— — In the Matter of Vizio—Consumer privacy
§ 34:143	——In the Matter of Practice Fusion, Inc.
§ 34:144	— — In the Matter of Very Incognito Technologies—
3 0 1.111	APEC Cross Border Privacy Rule
§ 34:145	——In the Matter of ASUSTeK Computer, Inc.
§ 34:146	— —In the Matter of InMobi—Consumer privacy
	and COPPA
§ 34:147	——In the Matter of Henry Schein
§ 34:148	——In the Matter of Oracle Corporation
§ 34:149	FTC guidelines on protecting personal information
§ 34:150	—Take stock
§ 34:151	—Scale down
§ 34:152	—Lock it
§ 34:153	—Pitch it
§ 34:154	—Plan ahead
§ 34:155	The FTC and the U.S. SAFE Web Act of 2006
§ 34:156	FTC advertising guidelines—The FTC's dot com
8 94.157	disclosures
§ 34:157	—Online behavioral advertising guidance
§ 34:158	— —Principle 1—Transparency and consumer control
§ 34:159	——Principle 2—Reasonable security, and limited
5 04.100	data retention, for consumer data
§ 34:160	——Principle 3—Affirmative express consent for
5	material changes to existing privacy promises
§ 34:161	——Principle 4—Affirmative express consent to (or
al	
clxxx	

	prohibition against) using sensitive data for behavioral advertising
§ 34:162	<u> </u>
0	other than behavioral advertising a call for
	additional information
§ 34:163	—FTC social media guidance—Background
§ 34:164	— — Treatment of endorsements and testimonials
§ 34:165	— —General considerations
§ 34:166	— —Consumer endorsements
§ 34:167	— Expert endorsements
§ 34:168	——Endorsements by organizations
§ 34:169	——Disclosure of material conditions
§ 34:170	—FTC regulations regarding "free" offers
§ 34:171	FTC Copier Guidance
§ 34:172	FTC security guidance—"Start with Security: A
	Guide for Business"
QTT 4 TO	
CHAP	TER 35. PRIVACY LITIGATION
§ 35:1	Introduction
§ 35:2	Theories of liability
§ 35:3	Conversion of information by deletion
§ 35:4	The Restatement (Second) of Torts view of privacy liability
8 35.5	Invasion of privacy liability and peer-to-peer

Invasion of privacy liability and peer-to-peer § 35:5 networks § 35:6 Federal Trade Commission Act as basis for privacy

litigation

§ 35:7 Federal Trade Commission Act—Actions

—Recent FTC consent orders § 35:8

§ 35:9 Electronic Communications Privacy Act and Computer Fraud and Abuse Act

§ 35:10 Sony data breach

Security litigation against BJ's Wholesale Club, Inc. § 35:11 and TJX

§ 35:12 Litigation against third-party consultants

§ 35:13 California—unfair competition law

-CLRA and UCL dismissed on reliance and no § 35:14 economic injury

§ 35:15 -Pretexting and common law liability in California

§ 35:16 —The media and subterfuge

—Litigation under California's constitutional right § 35:17 of privacy

§ 35:18 —Failure to timely notify of data breach—The People of the State of California v. Kaiser Foundation HealthPlan, Inc.

§ 35:19	—Standing under Shine the Light
§ 35:20	New York law
§ 35:21	—Attorney General actions
§ 35:22	—Article 63
§ 35:23	The damage conundrum
§ 35:24	Public access to websites is insufficient to establish a claim
§ 35:25	Litigation resulting from public disclosure of information on the Internet
§ 35:26	Actual misuse of data required to show damage
§ 35:27	Requirement of actual damages under the Privacy Act
§ 35:28	Standing in privacy litigation
§ 35:29	—No Article III standing where Social Security number mailed
§ 35:30	—Article III and loyalty points
§ 35:31	—Alternative standing theories
§ 35:32	California Medical Information Act (CMIA) litigation
§ 35:33	CMIA litigation—Sutter Health
§ 35:34	—Potential for access cases applying Sutter Health
§ 35:35	Encryption and loss of passwords
§ 35:36	Data security litigation
§ 35:37	Enforceability of arbitration clauses in agreements
§ 35:38	Litigation over PCI and limitations on liability
§ 35:39	Aiding and abetting fraud through banks failure to have adequate security systems
§ 35:40	HIPAA and Illinois law does not create a duty to protect that is actionable
§ 35:41	Privacy policy as a contract
§ 35:42	Franchise liability
§ 35:43	Privacy in the context of litigation
§ 35:44	—Production of electronic information
§ 35:45	Redaction in bankruptcy filings
§ 35:46	—Exemptions
§ 35:47	—Filings made under seal
§ 35:48	—Protective orders
§ 35:49	—Option for filing a reference list
§ 35:50	—Waiver of protection of identifiers
§ 35:51	—Utility account numbers are financial account numbers
§ 35:52	Privacy protection for filings made with federal courts
§ 35:53	Exemptions from the redaction requirement
§ 35:54	—Limitations on remote access to electronic files
§ 35:55	—Filings made under seal or with redactions

clxxxii

§ 35:56	—Protective orders
§ 35:57	—Waiver of protection of identifies
§ 35:58	—Public access to papers
§ 35:59	Privacy in the context of litigation—Production of electronic media and trade secrets
§ 35:60	—Requiring the creation of data
§ 35:61	—Electronic discovery and costs
§ 35:62	—Foreign privacy laws/discovery
§ 35:63	Privacy and search engine data
§ 35:64	Facebook terms of service
§ 35:65	BJ's security breach litigation
§ 35:66	Electronic conversion of data
§ 35:67	Application of litigation privilege to privacy claims
§ 35:68	Litigation under the DPPA and § 1983
§ 35:69	Recent DPPA litigation issues
§ 35:70	FACTA litigation and class certification
§ 35:71	Accessibility of information may not destroy a
	privacy right
§ 35:72	FCRA litigation
§ 35:73	Litigation resulting from public disclosure of
	information on the Internet
§ 35:74	In the Matter of Pulsepoint, Inc. (2013)
§ 35:75	In the Matter of DealerApp Vantage, LLC— Enforcement by the State of New Jersey
§ 35:76	Class actions—Issues in privacy litigation
§ 35:77	—General issues with privacy class actions
§ 35:78	—Class actions in federal court—The requirements
	of Rule 23
§ 35:79	— —Rule 23(b)—A general overview
§ 35:80	———Examination of 23(b)(1)
§ 35:81	———Examination of 23(b)(2)
§ 35:82	— — Examination of $23(b)(3)$
§ 35:83	———Notice under Rule 23(b)(3)
§ 35:84	———Potential defenses based upon individual
	reliance
§ 35:85	———Examples of cases involving privacy concerns
§ 35:86	—California class action issues
§ 35:87	——Ascertainable class
§ 35:88	——Community of interest
§ 35:89	——Predominant questions of law or fact
§ 35:90	— —Typicality
§ 35:91	——Adequate representation
§ 35:92	——Additional showing—Substantial benefit to the
	court and litigants
§ 35:93	——No consideration of the merits

§ 35:94	——Application to privacy litigation
§ 35:95	—TCPA claims and class certification
§ 35:96	—Pleading
§ 35:97	—Discovery
§ 35:98	—Discovery regarding Penal Code—Section 632
	cases
§ 35:99	Privacy litigation under the Lanham Act
§ 35:100	Enforceability of forum selection clauses in emails
§ 35:101	Coverage for computer related incidents
§ 35:102	Joinder of Doe defendants

CHAPTER 36. JURISDICTION AND THE DORMANT COMMERCE CLAUSE

§ 36:1	Generally
§ 36:2	General versus specific jurisdiction
§ 36:3	Specific jurisdiction
§ 36:4	Purposeful availment
§ 36:5	Forum-related activities
§ 36:6	Reasonableness
§ 36:7	Jurisdiction and emails
§ 36:8	Use of a company's website as establishing jurisdiction
§ 36:9	Posting on a blog establishes jurisdiction
§ 36:10	Personal jurisdiction over individuals
§ 36:11	Ebay jurisdiction
§ 36:12	Service by email
§ 36:13	Swarm joinder
§ 36:14	The dormant Commerce Clause

CHAPTER 37. ANONYMOUS POSTING AND SUBPOENAS 8 37:1 Privacy in the context of litigation—Subpoenas

§ 37:1	Privacy in the context of litigation—Subpoenas
§ 37:2	— —First Amendment issues
§ 37:3	 —Anonymous posting and subpoenas
§ 37:4	$$ 2Themart.com
§ 37:5	———The Solers and Cablevision tests
§ 37:6	———The Dendrite and Cahill standard
§ 37:7	———The Northern District of California
§ 37:8	— — —The Illinois standard
§ 37:9	 —Standing regarding subpoenas
§ 37:10	— —Terms of service and privacy policy establishing
	notice
§ 37:11	— —Wisconsin's application of the Cahill test

clxxxiv

Table of Contents

§ 37:12	— —Anonymous posting and subpoenas—The
	Mobilisa standard
§ 37:13	— — The Krinsky standard
§ 37:14	— — —A new standard—The Doe I standard
§ 37:15	———The Sony standard
§ 37:16	— — California's anti-slapp law
§ 37:17	New York law—Preaction discovery in New York
§ 37:18	Privacy in the context of litigation—Subpoenas—
	Anonymous posting and subpoenas—Virginia law
§ 37:19	Personal jurisdiction versus subpoena jurisdiction
§ 37:20	Privacy in the context of litigation—Subpoenas—
	Anonymous posting and subpoenas—Federal court
§ 37:21	— — —Standing
§ 37:22	——Section 1985.3 of the California Code of Civil
	Procedure
§ 37:23	——Blogging
§ 37:24	— —Library records
§ 37:25	—Other subpoenas—First Amendment issues—
	Admission of reading materials as evidence of intent
§ 37:26	—Employee blogging
§ 37:27	First Amendment concerns and public employee
	blogging
§ 37:28	Privacy in the context of litigation—Subpoenas—
	Steps to deal with a subpoena

CHAPTER 38. PRIVACY 3.0—THE PRINCIPLE OF PROPORTIONALITY

Introduction
Privacy 1.0—A historical background
Privacy 2.0—A historical background
The weaknesses of common law theories
The fall of tort theory
The rise of the FTC—Current enforcement theories
and their reliance upon proportionality
The importance of principle based analysis
English common law is not the answer
The United States adoption of EU-like principles
A current assessment of societal views in the United
States on information sharing and management
Privacy 3.0
—Tier I—Highly sensitive information
—Tier II—Sensitive information
—Tier III—Slightly sensitive information
—Tier IV—Nonsensitive information
—Laws that validate the principle of proportionality

§ 38:17 ——CFAA — — California's Invasion of Privacy Act § 38:18 § 38:19 ——The Combined DNA Index System (CODIS) § 38:20 — Other restrictions on genetic privacy § 38:21 — Notice of security breach laws § 38:22 — — The Videotape Privacy Protection Act § 38:23 — —Federal Cable Privacy Act § 38:24 — — Credit freeze laws § 38:25 — —Identity theft § 38:26 --- Restrictions on Social Security numbers § 38:27 ——Pretexting § 38:28 — — CAN-SPAM § 38:29 -Legislatures do not always assess the risks correctly Conclusion § 38:30

CHAPTER 39. PRIVACY ISSUES FOR PUBLIC UTILITY COMPANIES

I. INTRODUCTION

§ 39:1 General
§ 39:2 Red Flags
§ 39:3 State regulations—An introduction
§ 39:4 Smart Grid
§ 39:5 Security concerns
§ 39:6 Utilities as an ISP

II. SPECIFIC STATE LAWS

A. CALIFORNIA

§ 39:7 Disclosures by utilities—In general
 § 39:8 —California utility privacy law regarding usage data
 § 39:9 —Civil enforcement
 § 39:10 —Re Proposed Policies Governing Restructuring

 California's Electric Services Industry and
 Reforming Regulation Decision 97-10-031

 § 39:11 —Access to computer models and rate setting

B. ILLINOIS

§ 39:12 Customer records and information
 § 39:13 Disclosure of customer information to lawenforcement agencies
 § 39:14 Customer information

clxxxvi

Table of Contents

C. MINNESOTA

- § 39:15 Municipal utility customer data
- § 39:16 Billing

D. WISCONSIN

§ 39:17 Information available to customers

CHAPTER 40. A REFERENCE FOR YOUR COMPANY

COMI	2 H 1 L
§ 40:1	Introduction
§ 40:2	General issues for companies—Marketing concerns
§ 40:3	Two party consent
§ 40:4	Defining the proper scope of investigations
§ 40:5	E-mail footers
§ 40:6	Defining "personally identifiable information"
§ 40:7	Information security requirements
§ 40:8	Insurance, indemnity, and other risk shifting mechanisms
§ 40:9	Computer crime laws—Confidential information concerns
§ 40:10	Anonymous subpoenas
§ 40:11	Blogging and social networking
§ 40:12	Security breaches
§ 40:13	Security freeze laws
§ 40:14	Red flag regulations under FACT Act
§ 40:15	Electronic health records
§ 40:16	Social Security numbers
§ 40:17	Credit card receipt issues
§ 40:18	Spyware, phishing, and pharming
§ 40:19	Cloud computing
§ 40:20	Transfers in M&A, bankruptcy, and retroactive changes to privacy policies
§ 40:21	Internet concerns
§ 40:22	Public display of information
§ 40:23	Behavioral advertising
§ 40:24	Genetic privacy
§ 40:25	Payment card industry standards
§ 40:26	Biometrics
§ 40:27	RFID/GPS
§ 40:28	International issues
§ 40:29	SOX
§ 40:30	Responding to government requests
§ 40:31	Application of consumer reporting agency laws

clxxxvii

§ 40:32	Employment applications
§ 40:33	Industry specific concerns—Energy companies
§ 40:34	—Financial institutions
§ 40:35	—Hospitals and medical providers
§ 40:36	—Government employers
§ 40:37	—Social networking sites
§ 40:38	—The airline industry
§ 40:39	—Retail issues
§ 40:40	—Telecom
§ 40:41	—Insurance companies
§ 40:42	—Publishers
§ 40:43	—Cable and video companies
§ 40:44	Understanding and managing cyber risk—
	Introduction
§ 40:45	—COSO 2017 Framework
§ 40:46	—NIST
§ 40:47	—SANS Top 20
§ 40:48	—Understanding cyber risk and risk tolerance
§ 40:49	—Understanding cyber
§ 40:50	—The costs of cyber
§ 40:51	—What are the ramifications of cyber incidents?
§ 40:52	—Risk assessments, assessing risk, and risk
	tolerance
§ 40:53	—Assessing risk/understanding enterprise cyber risk
§ 40:54	—What is your cyber risk tolerance?
§ 40:55	—Determining risk tolerance:
§ 40:56	—What are the relevant legal obligations for the
	Board?
§ 40:57	—Where should cyber sit at the Board?
§ 40:58	—What key questions should the Board be asking?
§ 40:59	—What key questions should management be asking?
§ 40:60	—What key questions should the General Counsel be
0 40 01	asking?
§ 40:61	—Key incident response questions to consider
§ 40:62	—What should the Board do?
§ 40:63	—What should management do?

CHAPTER 41. APPLICATION OF NON-PRIVACY AND SECURITY-BASED LAWS TO CYBERSECURITY, PRIVACY, AND OTHER DATA ISSUES—SEC AND DELAWARE OBLIGATIONS

I. OVERVIEW

§ 41:1 Introduction

clxxxviii

§ 41:2 An overview

II. UNDERSTANDING SEC AND DELAWARE OBLIGATIONS

§ 41:3 § 41:4	Why do for-profit companies exist? SEC obligations summarized
§ 41:5	Delaware law summarized—Why does Delaware law
	matter?
§ 41:6	—The internal affairs doctrine
§ 41:7	—Operations versus oversight
§ 41:8	—The duty of care and the duty of loyalty
§ 41:9	Key take-aways regarding SEC and Delaware law

III. GOVERNANCE

\$41:10	Overview
§ 41:11	Differing governance obligations
$\S 41:12$	Corporate governance
§ 41:13	Nested governance
§ 41:14	The materiality fallacy—An over-emphasis on legal risk
$\S 41:15$	Putting technology, data, and AI risk in context
§ 41:16	Combining Delaware corporate principles and technology, data, and AI risk
§ 41:17	Examples of resiliency and legal compliance impacts
§ 41:18	Creating technology, data, and AI risk governance
§ 41:19	Redefining requests
§ 41:20	Conclusions and take-aways

CHAPTER 42. EUROPEAN UNION ARTIFICIAL INTELLIGENCE ACT

§ 42:1	Introduction
§ 42:2	Subject matter
§ 42:3	Scope
§ 42:4	Amendments to Annex I
§ 42:5	Prohibited AI practices
§ 42:6	High-risk AI practices—Classification of AI system as high-risk—Classification rules for high-risk AI systems
§ 42:7	——Amendments to Annex III
§ 42:8	—Requirements for high-risk AI systems— Compliance with the requirements
§ 42:9	— —Risk management system
§ 42:10	——Data and data governance

§ 42:11	— —Technical documentation
§ 42:12	— —Record-keeping
§ 42:13	——Transparency and provision of information to
	users
§ 42:14	— —Human oversight
§ 42:15	——Accuracy, robustness and cybersecurity
§ 42:16	—Obligations of providers and users of high-risk AI
	systems and other parties—Obligations of providers
§ 42:17	——Quality management sysyem
§ 42:18	——Obligation to draw up technical documentation
§ 42:19	——Conformity assessment
§ 42:20	——Automatically generated logs
§ 42:21	——Corrective actions
§ 42:22	— —Duty of information
§ 42:23	——Cooperation with competent authorities
§ 42:24	 —Obligations of product manufacturers
§ 42:25	——Authorised representatives
§ 42:26	— — Obligations of importers
§ 42:27	——Obligations of distributors
§ 42:28	— — Obligations of distributors, importers, users or
	any other third-party
§ 42:29	——Obligations of users of high-risk AI systems
§ 42:30	—Notifiying authorities and notified bodies—
	Notifying authorities
§ 42:31	——Application of a conformity assessment body for
	notification
§ 42:32	——Notification procedure
§ 42:33	Requirements for high-risk AI systems—Notifiying
	authorities and notified bodies—Notified bodies
§ 42:34	High-risk AI practices—Notifiying authorities and
	notified bodies—Subsidiaries of and subcontracting
0. 40.05	by notified bodies
§ 42:35	——Identification numbers and lists of notified
6 40 00	bodies designated under this regulation
§ 42:36	— — Changes to notifications
§ 42:37	— — Challenge to the competence of notified bodies
§ 42:38	——Coordination of notified bodies
§ 42:39	——Conformity assessment bodies of third countries
§ 42:40	—Standards, conformity assessment, certificates,
	registration—Harmonised standards
§ 42:41	——Common specifications
§ 42:42	——Presumption of conformity with certain
0.10.10	requirements
§ 42:43	——Conformity assessment
§ 42:44	——Certificates

§ 42:45	——Appeal against decisions of notified bodies
§ 42:46	——Information obligations of notified bodies
§ 42:47	——Derogation from conformity assessment
	procedure
§ 42:48	————EU declaration of conformity
§ 42:49	——CE marking of conformity
§ 42:50	——Document retention
§ 42:51	——Registration
§ 42:52	Transparency obligations for certain AI systems
§ 42:53	Measures in favor of innovation—AI regulatory sandboxes
§ 42:54	—Further processing of personal data for developing certain AI systems in the public interest in the AI regulatory sandbox
$\S 42:55$	—Measures for small-scale providers and users
§ 42:56	Governence—European Artificial Intelligence Board— Establishment of the European Artificial Intelligence Board
§ 42:57	——Structure of the Board
§ 42:58	——Tasks of the Board
§ 42:59	—National competent authorities—Designation of
	national competent authorities
§ 42:60	EU database for stand-alone high-risk AI systems
§ 42:61	Post-market monitoring, information sharing, market surveillence—Post-market monitoring—Post-market monitoring by providers and post-market monitoring plan for high-risk AI systems
§ 42:62	 — Sharing of information on incidents and malfunctioning—Reporting of serious incidents and of malfunctioning
§ 42:63	—Enforcement—Market surveillance and control of AI systems in the Union market
§ 42:64	——Access to data and documentation
§ 42:65	——Procedure for dealing with AI systems
	presenting a risk at national level
§ 42:66	— —Union safeguard procedure
§ 42:67	——Compliant AI systems which present a risk
§ 42:68	— —Formal non-compliance
§ 42:69	Codes of conduct
§ 42:70	Confidentiality and penalties—Confidentiality
§ 42:71	—Penalties
§ 42:72	—Administrative fines on Union institutions, agencies and bodies
§ 42:73	Delegation of power and committee procedure— Exercise of the delegation
§ 42:74	—Committee procedure

Table of Laws and Rules			
$\S 42:77$	Entry into force and application		
§ 42:76	Evaluation and review		
342:75	Amendments		

Table of Cases

Index