

DMA OFFSHORING ALERT

PROPOSED LEGISLATION

As the offshore marketplace continues to expand, both state and federal legislators have proposed regulations in this area.

Please note: The federal and state bills mentioned below are only proposals that were previously introduced in Congress or the states. These bills have NOT been enacted into law, and they may or may not be reintroduced in 2005.

Proposed Federal Legislation

1) The Safeguarding Americans From Exporting Identification Data Act, or “SAFE-ID” Act

In May of 2004, Senator Hillary Rodham Clinton (D-NY) introduced the SAFE-ID Act, which seeks to regulate the transmission of personally identifiable information to foreign affiliates and subcontractors. The bill requires companies to obtain prior consent from an existing or potential customer before the customer’s information is sent to an affiliate or a subcontractor in another country. It also calls for companies to be held liable for mishandling a customer’s private information.

2) The Personal Data Offshoring Protection Act of 2004

Representative Edward Markey (D-MA) introduced a bill similar to the SAFE-ID Act in the House of Representatives. The bill would prohibit the transfer of personal information to any person outside the United States without notice and consent. It would also prohibit the transfer of personal information to countries with inadequate privacy laws, unless the customer gives consent to such transfers. Transfers should take place within one year of the customer’s consent. The bill gives the Federal Trade Commission the authority to determine which countries meet the privacy requirements and make such information available to the public.

3) The Call Center Consumer's Right to Know Act

In November of 2003, Senator John Kerry (D-MA) introduced The Call Center Consumer's Right to Know Act, which would require employees at a call center to disclose their physical location.

4) The Increasing Notice of Foreign Outsourcing Act

In June of 2004, Senator Bill Nelson (D-FL) introduced The Increasing Notice of Foreign Outsourcing Act. The bill requires employees of foreign call centers to disclose their physical location upon the request of individuals residing within the United States. It also requires corporations to certify their compliance with the Federal Trade Commission's statutes. Under the Act, the FTC would have the authority to set regulations, including appropriate civil penalties necessary for the implementation of this act.

Proposed State Legislation

At the state level, a number of states have proposed offshoring legislation addressing such issues as disclosure requests and requirements, transfers to alternate operators upon request, and prohibiting the transfer of personal identifying or financial information.

California was at the forefront of states trying to regulate the offshoring of private information in 2004. A bill introduced by State Senator Joseph Dunn would have required that any work involving information that is private with respect to Californians or essential to California's homeland security be performed inside the U.S. In September 2004, California Governor Arnold Schwarzenegger vetoed this bill and other legislation that would have prohibited, for instance, the offshoring of personal data such as Social Security and driver's license numbers.

Introduced in 2004, a New Jersey bill sponsored by Senator Shirley K. Turner would require all services under state contracts or subcontracts to be performed within the US. Also in NJ, Assembly Resolution 148, sponsored by Assemblyman Jeff Van Drew, memorializes Congress to pass legislation concerning public disclosure of companies outsourcing jobs.

This alert is brought to you by
The DMA's Teleservices Ethics Committee
&
The DMA's Department of Ethics and Consumer Affairs.
Contact us at ethics@the-dma.org