[Alerts and Updates]

Electronic Discovery Act Becomes Law in California, Effective Immediately

July 2, 2009

On June 29, 2009, California Gov. Arnold Schwarzenegger signed the state's Electronic Discovery Act ("the Act") into law, implementing new rules for electronic discovery in California civil cases. The Act closely tracks the 2006 amendments to the Federal Rules of Civil Procedure, and institutes uniform processes and procedures for the discovery of electronically stored information in California court proceedings. The governor vetoed a similar bill last year, to allow him to devote attention to the more-urgent state budget crisis. The bill signed into law on June 29 passed both legislative houses unanimously and, as an urgency statute, is effective immediately.

The Act establishes procedures for the discovery of electronically stored information, and serves to extend the Civil Discovery Act—which requires the production of hard-copy documents as they are kept in the usual course of business—to the production of electronically stored information. Furthermore, the Act defines the manner in which parties may seek protective orders regarding demands for production, inspection, copying, testing or sampling of electronically stored information, on grounds that the information is not reasonably accessible because of undue burden or expense. Significantly, the Act provides that a court shall not impose sanctions on a party or an attorney of a party for failure to provide electronically stored information that has been lost, damaged, altered or overwritten as a result of the routine, good-faith operation of an electronic information system.

The Act includes other significant modifications to existing laws on electronic discovery, including:

- Electronically stored information must be produced in the form in which it is ordinarily maintained, or in a form that is reasonably usable.
- Where a party responding to a production request for electronically stored information objects to a specified form for production, or if no production form is specified in the demand, the responding party shall state in its response the form in which it intends to produce each type of requested information.
- Where a demand for production does not specify the form for producing electronically stored information, the responding party must produce the information in a form in which the information is ordinarily maintained or in a form that is reasonably usable, but need not produce the same electronically stored information in more than one form.
- A party may object to production on the grounds that the material is not reasonably accessible because of undue burden or expense, and must bear the burden of demonstrating the validity of the objection. Even if the objecting party establishes that the electronically stored information is from a source that is not reasonably accessible because of undue burden or expense, the court may nonetheless order discovery if the demanding party shows good cause, subject to specified restrictions.
- The existing rules on sanctions that pertain to hard-copy discovery are now applicable to electronic discovery; but as stated above, the Act prohibits imposition of sanctions for failure to provide electronically stored information that has been lost, damaged, altered or overwritten as the result of the routine, good-faith operation of an electronic information system.
- The procedures for production of electronically stored information delineated in the Act apply, with some limitations, to third parties who are compelled to produce information in response to valid subpoenas.

In light of the significance of California's Electronic Discovery Act, and anticipated judicial interpretations, additional analysis about this statute will be provided in the coming months.

For Further Information

If you have any questions regarding this Alert or would like more information, please contact Karen S. Crawford, any member of the Trial Practice Group or the attorney in the firm with whom you are regularly in contact.