

## IDENTITY THEFT LEGISLATION

### BACKGROUND:

CONGRESS UNDER A LOT OF PUBLIC PRESSURE TO ENACT LEGISLATION AFTER ALL OF THE RECENT DATA BREACHES

THAT'S WHY THERE ARE SO MANY BILLS THAT HAVE BEEN INTRODUCED

BUT PACKED CONGRESS CALENDARS LEAVE LITTLE ROOM FOR DATA SECURITY

WILL TRY TO HIGHLIGHT BILLS THAT ARE MOVING - AS YOU WILL SEE, HAVE COMMON THEME

### SENATE:

S 1408

SPONSOR: GORDON SMITH (R-OR)

ALLOWS CONSUMERS TO PUT FREEZE ON CREDIT REPT

PROHIBITS SOLICITATION - SSN'S W/O PURPOSE

PROHIBITS SCHOOLS, EMPLOYERS, ETC FROM

USING SSN'S AS ID

PROHIBITS STATES FROM USING SSN'S IN STATE

IDS -E.G. DRIVERS' LICENSES

PROHIBITS SALE/PURCHASE DISPLAY OF SSN'S

FTC TO ENFORCE, ISSUE REGS ON SAFEGUARDS

ENTITIES W/"REASONABLE" BASIS FOR

BELIEVING RISK OF ID THEFT MUST NOTIFY

INDIVS W/IN 45 DAYS OF BREACH

DISCOVERY

**IF BREACH AFFECTS 1K OR MORE, MUST NOTIFY  
FTC & CREDIT REPORTING AGENCIES; FTC  
THEN REQ'D TO REPORT  
PENALTIES: \$11K CIVIL PENALTY FOR EACH  
UNNOTIFIED CONSUMER AFFECTED BY  
BREACH  
PREEMPTS STATE LAWS ON LIABILITY FOR  
ENTITIES WHO COLLECT PERSONAL INFO,  
NOTIFICATION OF SECURITY BREACHES &  
CREDIT REPT FREEZES  
STATE AGS CAN BRING CIVIL SUIT, BUT MUST  
NOTIFY FED GOVT 1<sup>ST</sup> & FED GOVT  
ALLOWED TO INTERVENE AFTER SUIT FILED**

**JUST PASSED SENATE COMMERCE, SCIENCE &  
TRANSPORTATION COMMITTEE  
HAS BIPARTISAN SUPPORT**

**S1326**

**SPONSOR: JEFF SESSIONS (R-AL)**

**REQUIRES COS TO NOTIFY IF BREACHES ARE  
"SIGNIFICANT THREAT TO ID THEFT"  
REQUIRES COS TO IMPLEMENT DATA SECURITY  
SAFEGUARDS  
MAIL, EMAIL, PHONE NOTIFICATION OK  
CAN POST ON WEB SITE OR MAJOR MEDIA  
OUTLETSBUT ONLY IF COST < \$250K OR  
NO OF PEOPLE > 500K  
FAILURE TO COMPLY: FINES OF \$250K/BREACH OR  
ACTUAL DAMAGES  
EXEMPTS STATE LAWS ON ELECTRONIC INFO  
SECURITY STDS OR BREACH NOTIFICATION  
ONLY STATE AG CAN BRING CIVIL ACTION IN FED CT  
BUT MUST GIVE US AG WRITTEN NOTICE & CC OF  
COMPLAINT. US AG CAN FILE ACTION,  
INTERVENE & WOULD PREEMPT STATE AG**

**REPORTED OUT OF JUDICIARY COMMITTEE  
MAY BE COMBINED W/S1408**

**S 1789**

**SPONSOR: ARLEN SPECTOR (R-PA)**

**MAKES IT A CRIME TO INTENTIONALLY  
CONCEAL A BREACH - GIVES SECRET SVCE  
AUTHORITY TO INVESTIGATE  
DATA BROKERS TO ALLOW CONSUMERS ACCESS  
TO PERSONAL INFO; ESTABLISH  
PROCEDURES TO CORRECT  
FAILURE TO COMPLY = \$1K/VIOLATION/DAY  
ENFORCED BY FTC  
PREEMPTS STATE LAWS ON DATA BROKERS RE  
ACCESS TO INFO & CORRECTIONS  
STATE MAY BRING CIVIL ACTION TO ENJOIN,  
ENFORCE COMPLIANCE OR OBTAIN  
PENALTIES BUT MUST GIVE FTC WRITTEN  
NOTICE & CC OF COMPLAINT. FTC CAN  
STAY ACTION OR INTERVENE. IF FTC  
BRINGS ACTION, STATE AG CANNOT UNTIL  
FTC ACTION RESOLVED  
REQUIRES BUSINESSES TO ESTABLISH POLICIES  
TO PROTECT PERSONAL INFO & TO NOTIFY  
OF BREACH**

**REPORTED OUT OF SENATE JUDICIARY  
COMMITTEE  
HAS BIPARTISAN SUPPORT**

**HOUSE**

**HR 4127**

**SPONSORED BY CLIFF STEARNS (R-FL)**

**REQUIRES COS TO HAVE SECURITY POLICY ON USE OF  
DATA THEY COLLECT + PROCESS FOR ASSESSING  
VULNERABILITIES IN DATA SYSTEMS**

**COS MUST ALSO APPOINT PERSON RESP FOR INFO  
SECURITY**

**REQUIRES THAT OBSOLETE DATA BE DISPOSED OF BY  
SHREDDING, PERMANENTLY ERASING**

**EXPANDS DEF OF BREACH OF SECURITY TO INCLUDE  
CASES IN WHICH RISK OF FRAUD NOT JUST ID  
THEFT**

**IF BREACH, MUST NOTIFY FTC & AFFECTED PARTIES -  
CAN BE IN WRITTEN OR EMAIL (IF CUSTOMER  
OKS; ONLY IF FTC DETERMINES NOTIFICATION \$  
IS EXCESSIVE CAN USE SUBSTITUTE METHOD**

**MUST ALSO PUT NOTICE OF BREACH ON WEB  
SITE & IN MEDIA**

**AFTER BREACH, MUST BE AUDIT OF SECURITY BY FTC  
OR CO MUST HIRE INDEPENDENT PARTY**

**AUTHORIZES \$ TO FTC**

**PREEMPTS STATE BREACH NOTIFICATION &  
DATA SECURITY LAWS**

**PASSED SUBCOMMITTEE OF ENERGY & COMMERCE  
COMMITTEE**

**WAS SCHEDULED TO BE MARKET UP BY FULL  
COMMITTEE LAST THURS BUT POSTPONED;  
STILL TRYING TO GET BIPARTISAN COMPROMISE  
TO ADDRESS DEMOCRATIC CONCERNS THAT  
CONSUMER PROTECTIONS WEAK**

- **DEMS OPPOSE PREEMPTION OF TOUGHER  
STATE ID THEFT LAWS**
- **SAY BREACH NOTIFICATION WEAK - COS COULD  
DECIDE WHEN THERE IS "SIGNIFICANT RISK OF  
ID THEFT" TO NOTIFY BUT R'S SAY OTHERWISE  
TOO MANY NOTIFICATIONS W/O HARM**

**HOUSE V SENATE (HR 1427 V S 1326)**

**BOTH REQUIRE NOTIFICATION OF BREACH WHERE RISK OF  
ID THEFT BUT HOUSE INCLUDES RISK OF FRAUD**

**HOUSE REQUIRES AUDIT AFTER BREACH; SENATE DOESN'T**

**SENATE HAS ADDITIONAL REQMENTS:**

**BEFORE NOTIFYING CONSUMERS OF BREACH, MUST**

**NOTIFY CONSUMER REPORTING AGENCIES**

**REQUIRES STATE AG TO NOTIFY US AG BEFORE FILING**

**ACTION & IF DOJ INTERVENES, STATE ACTION**

**PREEMPTED**

**REQUIRES PENALTY OF UP TO \$250K/BREACH OR**

**ACTUAL DAMAGES**

**MARKUPS & ACTION PROBABLY IN EARLY 2006**