

Congress Insistent on Weakening Data Breach Laws

January 8, 2016 – For several years now, we’ve been talking about the “worst data breach bill ever.” But what we haven’t been talking about just one bill. No, we’ve been talking about a series of bills; each one worse than the last. Fortunately, none of the proposals have grown the legs needed to move forward. That is, until now. The latest iterations of the “worst data breach bill ever” are getting a lot of support. And there is now a plan to start moving them forward this spring.

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Until last month, the current proposed bills had been stuck in congressional committees. But in December, the House Financial Services Committee approved a bill by Rep. Randy Neugebauer (R-Texas). A similar bill in the Energy and Commerce Committee is still languishing there but Neugebauer has stated that he is working with members of that committee to combine the two bills and bring them to a vote on the floor of the House of Representatives.

The hold-up on the second bill has been precisely the thing that makes these pieces of legislation so bad. Some Democrats on the Energy and Commerce Committee have been upset because the bill usurps all state data breach laws. And in most cases, those state data breach laws offer significantly more protection to consumers than what congress is cobbling together.

What the final bill will look like is a bit of a crap shoot at this time, but if past proposals are any indication, here is what we expect.

The bill won’t cover medical record data breach. In fact, it is likely to exempt any entity that is covered by HIPAA. That’s huge because California included medical records in their law some time ago and, as a result, a number of other states have followed suit.

The company that causes the data breach will determine if the breach is likely to cause identity theft. If they determine that ID theft is unlikely, they won’t have to disclose the breach.

Individuals could lose their right to sue. Some of the proposal remove the right for private party lawsuits; leaving legal recourse to federal and state agencies.

And of course, any bill passed is going to usurp existing state laws and prevent the states from enacting any future data breach legislation.

Based on the current support for these bills, there are only two or three things that could derail passage.

If any of the current presidential candidates come out forcefully against this legislation, it may slow down the process. At the very least it would thrust the issue into the limelight.

There is also the possibility of a filibuster in the Senate, but we think that's unlikely. The bills enjoy fairly broad support in the Senate. A filibuster would require the support of at least 41 senators who would most likely be Democrats. But since the President has said repeatedly that he supports this legislation, it is hard to see how a final bill wouldn't pass in the Senate.

The best chance of derailing the bill would come from calls of opposition from the public. But that means that millions of people need to start calling their congressional representatives and senators and letting them know how they feel about the issue. That's precisely what we're urging our readers to do.

We'll continue to keep you posted on this issue.

by Jim Malmberg

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