

Overview of Proposed Federal Data Privacy Legislation for 2011

By Andrew Martin

Arguably as a result of the Obama administration's call for federal data privacy and security legislation, a number of bills have been introduced this year in both the House and Senate to address consumer-data privacy issues. Introduced earlier this spring were the [Do Not Track Online Act](#), [discussed here previously](#), and the comprehensive, [Commercial Privacy Bill of Rights Act](#) sponsored by political heavyweights Senators John Kerry and John McCain. A new crop of bills introduced this summer focuses on data-protection procedures and breach-notification requirements. Highlights from these entries, by Senators Leahy and Pryor and Representative Bono Mack, are outlined below.

Personal Data Privacy and Security Act – Sen. Leahy

- Preempts state breach notification statutes
- Criminalizes intentionally or willfully concealing a data breach
- Breach notification to be made “without unreasonable delay”

Secure and Fortify Electronics (SAFE) Data Act – Rep. Bono Mack

- Preempts state breach notification statutes
- 48 hour breach notification requirement, in some cases
- Civil penalties available; capped at \$5M

Data Security and Breach Notification Act – Sen. Pryor

- Similar form to the SAFE Data Act
- 60 day breach notification requirement
- Includes special rules for “Information Brokers”

Whether any of these become law by the end of this year's session is not clear. However, the 48-hour breach-notification requirement proposed by Rep. Bono Mack seems to be generally unworkable in practice, making the requirement unlikely to be a component of any enacted law. What is clear, however, is that with recent, highly publicized and scrutinized data breaches at [Lockheed Martin](#) and [Sony](#), greater-than-average political will exists in Congress to approve some form of federal data privacy and security legislation this year.



About the author Andrew Martin:

As an associate attorney with extensive prior experience advising information technology start-ups, Andrew's practice focuses on finding solutions for his clients' intellectual property issues. Due to his extensive experience in the software and technology industries, Andrew understands both the practical and legal issues involved in IP licensing agreements and disputes. In addition to licensing, Andrew helps his clients find new ways to use existing technologies to assist his clients in areas such as data privacy compliance. Andrew uses his diverse background which includes founding a record label and working for a world-wide concert promoter when counseling the firm's entertainment clients.

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