



COMMITTEE ON *DEMOCRATS*
ENERGY & COMMERCE
RANKING MEMBER FRANK PALLONE, JR.

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Opening Statement of Rep. Frank Pallone
Ranking Member, Committee on Energy and Commerce
Subcommittee on Commerce, Manufacturing, and Trade
Legislative Hearing on H.R. ____, the Data Security and Breach Notification
Act of 2015
March 18, 2015

Thank you Mr. Chairman. Today we are discussing a draft data security and breach notification bill released recently by the majority.

Data breaches are a plague on consumers, businesses, and our economy as a whole. Reducing the incidences of breaches and the adverse effects from them has rightfully been at the top of our agenda since 2005. Yet, it also has proven to be a complicated issue without an easy legislative solution.

I appreciate the efforts being taken to address the data breach problem, and I appreciate the difficulty of writing legislation that effectively protects consumers and lessens the burdens on the businesses that are the victims of criminal breaches.

While the sincerity of the efforts are not questioned, I do question the merits of the bill before us today. This bill simply does not strike the right balance.

There are clearly benefits to creating a unified system for breach notification. But we must be careful that a federal law ensures that protections for consumers are not weakened.

Many of the 51 state and territorial breach notification laws provide greater protections for consumers whose personal information is at risk as a result of a data breach. For example, at least seven states and the District of Columbia do not require a harm analysis before providing notice to consumers. At least 17 states' laws also include a private cause of action. At least nine states' laws cover health information.

In contrast, the draft under discussion today preempts stronger state and federal laws, requires a financial harm analysis, preempts state private rights of action, and does not cover health or location information.

Data breach notification is only part of the solution. The other crucial piece of any legislation should be baseline data security to help prevent breaches before consumers' personal information is put at risk. The draft before us eliminates state data security laws and replaces them with an unclear standard that will surely be litigated and left to judicial interpretation.

As I said at a hearing this past January, I want to be supportive of sound data security and breach notification legislation. But to get there, we must ask the right question. The question is

not whether any one federal agency would be better off. The question must always be whether legislation puts consumers in a better place than they are today. Unfortunately, the draft before us today does not put consumers in a better place.

Before I close, I must raise process issues. We received the draft bill last Thursday evening. The 114th Congress seems to have halted a long tradition of sharing text with all members of the Subcommittee at least a full week prior to a legislative hearing. This is not the first time this has happened this year in Energy and Commerce, and as we saw with our Communications Subcommittee, I suspect it won't be the last. Also, I must take issue with Chairman Burgess' opening remarks and repeat my longstanding belief that having token Democratic support does not make a measure bipartisan.

In closing, I hope we can work together to improve this bill before it moves further through the legislative process so that all members of the Committee can support it and it can be a truly bipartisan legislative product.