

Amendments Included in the Manager's Package to The Identity Theft Protection Act, S. 1408

Allen # 2 – (as modified) to clarify that no private right of action is created.

Nelson #4 - Report Language - To ensure FTC considers certain personal identifiers when promulgating rules.

Sununu # 1 – (as modified) to alter the mission of the Information Security Working Group.

Sununu #3 and #4 and Allen #3 - regarding enforcement and the scope of authority of State attorneys general and harmonization of existing federal laws.

Sununu # 5 - to clarify the content of the report required to be posted on the FTC website.

Sununu # 6 - to prevent the Commission from issuing technology mandates.

Sununu # 9 - to strengthen notification requirements.

DeMint # 3 - strike employer identification number from the definition of sensitive personal information.

Snowe # 2 - to clarify the limitation of preemption.

Boxer # 5 – (as modified) to decrease the maximum number of days a covered entity may take to notify individuals of a breach of security from 90 to 45 days.

AMENDMENT NO. _____ Calendar No. _____

Purpose: To clarify that no private right of action is created.

IN THE SENATE OF THE UNITED STATES—109th Cong., 1st Sess.

S. 1408

To strengthen data protection and safeguards, require data breach notification, and further prevent identity theft.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. ALLEN to the amendment (No. _____) proposed by _____

Viz:

- 1 On page 19, strike lines 23 through 25, and insert
- 2 the following:
- 3 (f) NO PRIVATE RIGHT OF ACTION.—
- 4 (1) IN GENERAL.—No private right of action or
- 5 class action shall be brought under this Act.
- 6 (2) STATE ATTORNEY GENERAL AUTHORITY.—
- 7 No person other than the attorney general of a State
- 8 may bring a civil action under the law of any State
- 9 if such action is premised, ~~in whole or in part,~~ upon
- 10 the defendant violating any provision of this Act.

VERSION #1

S.L.C.

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AMENDMENT NO.

Calendar No.

Purpose: To ~~amend the~~ ^{relating to} ~~provision~~ ^{of} the Information Security Working Group, ~~and for other purposes~~

IN THE SENATE OF THE UNITED STATES—109th Cong., 1st Sess.

S. 1408

To strengthen data protection and safeguards, require data breach notification, and further prevent identity theft.

Referred to the Committee on _____ and ordered to be printed

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AMENDMENTS intended to be proposed by Mr. SUNUNU to the amendment (No. _____) proposed by

Viz:

1 On page 27, line 9, strike "develop" and insert "col-
2 lect, review, disseminate, and advise on".

~~3 On page 27, strike lines 18 through 22, and insert
4 the following:
5 (c) SUNSET.—The Working Group established under
6 subsection (a) shall terminate 60 days after the date on
7 which the Working Group submits its report under sub-
8 section (b).~~

AMENDMENT NO. _____ Calendar No. _____

Purpose: To modify the enforcement authority of other agencies.

IN THE SENATE OF THE UNITED STATES—109th Cong., 1st Sess.

S. 1408

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Referred to the Committee on _____ and ordered to be printed

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AMENDMENT intended to be proposed by Mr. SUNUNU to the amendment (No. _____) proposed by _____

Viz:

1 On page 17, strike line 7 and all that follows through
2 page 18, line 21, and insert the following:

3 (1) section 8 of the Federal Deposit Insurance
4 Act (12 U.S.C. 1818), in the case of—

5 (A) national banks, and Federal branches
6 and Federal agencies of foreign banks, and any
7 subsidiaries of such entities (except brokers,
8 dealers, persons providing insurance, invest-
9 ment companies, and investment advisers), by
10 the Office of the Comptroller of the Currency;

1 (B) member banks of the Federal Reserve
2 System (other than national banks), branches
3 and agencies of foreign banks (other than Fed-
4 eral branches, Federal agencies, and insured
5 State branches of foreign banks), commercial
6 lending companies owned or controlled by for-
7 eign banks, organizations operating under sec-
8 tion 25 or 25A of the Federal Reserve Act, and
9 bank holding companies and their nonbank sub-
10 sidiaries or affiliates (except brokers, dealers,
11 persons providing insurance, investment compa-
12 nies, and investment advisers), by the Board of
13 Governors of the Federal Reserve System;

14 (C) banks insured by the Federal Deposit
15 Insurance Corporation (other than members of
16 the Federal Reserve System), insured State
17 branches of foreign banks, and any subsidiaries
18 of such entities (except brokers, dealers, per-
19 sons providing insurance, investment compa-
20 nies, and investment advisers), by the Board of
21 Directors of the Federal Deposit Insurance Cor-
22 poration; and

23 (D) savings associations the deposits of
24 which are insured by the Federal Deposit In-
25 surance Corporation, and any subsidiaries of

1 such savings associations (except brokers, deal-
2 ers, persons providing insurance, investment
3 companies, and investment advisers), by the Di-
4 rector of the Office of Thrift Supervision;

5 (2) the Federal Credit Union Act, by the Board
6 of the National Credit Union Administration with
7 respect to any federally insured credit union, and
8 any subsidiaries of such an entity;

9 (3) the Securities Exchange Act of 1934, by the
10 Securities and Exchange Commission with respect to
11 any broker or dealer;

12 (4) the Investment Company Act of 1940, by
13 the Securities and Exchange Commission with re-
14 spect to investment companies;

15 (5) the Investment Advisers Act of 1940, by the
16 Securities and Exchange Commission with respect to
17 investment advisers registered with the Commission
18 under such Act;

19 (6) State insurance law, in the case of any per-
20 son engaged in providing insurance, by the applica-
21 ble State insurance authority of the State in which
22 the person is domiciled.

AMENDMENT NO. _____ Calendar No. _____

Purpose: To correct the scope of the authority of State attorneys general.

IN THE SENATE OF THE UNITED STATES—109th Cong., 1st Sess.

S. 1408

To strengthen data protection and safeguards, require data breach notification, and further prevent identity theft.

Referred to the Committee on _____ and ordered to be printed

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AMENDMENTS intended to be proposed by Mr. SUNUNU to the amendment (No. _____) proposed by _____

Viz:

1 On page 17, line 5, insert “exclusively” after “en-
2 forced”.

3 On page 20, line 15, strike “A State” and insert “Ex-
4 cept as provided in section 5(c), a State”.

AMENDMENT NO. _____ Calendar No. _____

Purpose: To amend the scope of the authority of State attorneys general, and for other purposes.

IN THE SENATE OF THE UNITED STATES—109th Cong., 1st Sess.

S. 1408

To strengthen data protection and safeguards, require data breach notification, and further prevent identity theft.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. ALLEN to the amendment (No. _____) proposed by _____

Viz:

1 On page 17, line 5, insert “exclusively” after “en-
2 forced”.

3 On page 17, strike line 7 and all that follows through
4 page 18, line 21, and insert the following:

5 (1) section 8 of the Federal Deposit Insurance
6 Act (12 U.S.C. 1818), in the case of—

7 (A) national banks, and Federal branches
8 and Federal agencies of foreign banks, and any
9 subsidiaries of such entities (except brokers,

1 dealers, persons providing insurance, invest-
2 ment companies, and investment advisers), by
3 the Office of the Comptroller of the Currency;

4 (B) member banks of the Federal Reserve
5 System (other than national banks), branches
6 and agencies of foreign banks (other than Fed-
7 eral branches, Federal agencies, and insured
8 State branches of foreign banks), commercial
9 lending companies owned or controlled by for-
10 eign banks, organizations operating under sec-
11 tion 25 or 25A of the Federal Reserve Act, and
12 bank holding companies and their nonbank sub-
13 sidiaries or affiliates (except brokers, dealers,
14 persons providing insurance, investment compa-
15 nies, and investment advisers), by the Board of
16 Governors of the Federal Reserve System;

17 (C) banks insured by the Federal Deposit
18 Insurance Corporation (other than members of
19 the Federal Reserve System), insured State
20 branches of foreign banks, and any subsidiaries
21 of such entities (except brokers, dealers, per-
22 sons providing insurance, investment compa-
23 nies, and investment advisers), by the Board of
24 Directors of the Federal Deposit Insurance Cor-
25 poration; and

1 (D) savings associations the deposits of
2 which are insured by the Federal Deposit In-
3 surance Corporation, and any subsidiaries of
4 such savings associations (except brokers, deal-
5 ers, persons providing insurance, investment
6 companies, and investment advisers), by the Di-
7 rector of the Office of Thrift Supervision;

8 (2) the Federal Credit Union Act, by the Board
9 of the National Credit Union Administration with
10 respect to any federally insured credit union, and
11 any subsidiaries of such an entity;

12 (3) the Securities Exchange Act of 1934, by the
13 Securities and Exchange Commission with respect to
14 any broker or dealer;

15 (4) the Investment Company Act of 1940, by
16 the Securities and Exchange Commission with re-
17 spect to investment companies;

18 (5) the Investment Advisers Act of 1940, by the
19 Securities and Exchange Commission with respect to
20 investment advisers registered with the Commission
21 under such Act; and

22 (6) State insurance law, in the case of any per-
23 son engaged in providing insurance, by the applica-
24 ble State insurance authority of the State in which
25 the person is domiciled.

- 1 On page 20, line 15, strike "A State" and insert "Ex-
- 2 cept as provided in section 5(c), a State".

AMENDMENT NO. _____ Calendar No. _____

Purpose: To clarify the content of the report required to be posted on the FTC website.

IN THE SENATE OF THE UNITED STATES—109th Cong., 1st Sess.

S. 1408

To strengthen data protection and safeguards, require data breach notification, and further prevent identity theft.

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AMENDMENTS intended to be proposed by Mr. SUNUNU to the amendment (No. _____) proposed by _____

Viz:

1 On page 3, between lines 21 and 22, insert the following:
2

3 (3) CONTENTS OF REPORT.—The report described in paragraph (2) shall include—
4

5 (A) the number of individuals impacted by
6 the breach of security; and

7 (B) the fact that all impacted individuals
8 were notified directly in accordance with this
9 Act.

AMENDMENT NO. _____ Calendar No. _____

Purpose: To prevent the Commission from issuing technology mandates.

IN THE SENATE OF THE UNITED STATES—109th Cong., 1st Sess.

S. 1408

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AMENDMENTS intended to be proposed by Mr. SUNUNU to the amendment (No. _____) proposed by _____

Viz:

- 1 On page 33, after line 17, add the following:
- 2 **SEC. 14. PROHIBITION ON TECHNOLOGY MANDATES.**
- 3 Nothing in this Act shall be construed to permit the
- 4 Commission to issue regulations that require or impose a
- 5 specific technology, product, technological standard, or so-
- 6 lution.

AMENDMENT NO. _____ Calendar No. _____

Purpose: To strengthen notification requirements.

IN THE SENATE OF THE UNITED STATES—109th Cong., 1st Sess.

S. 1408

To strengthen data protection and safeguards, require data breach notification, and further prevent identity theft.

Referred to the Committee on _____ and
ordered to be printed

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AMENDMENT intended to be proposed by Mr. SUNUNU to
the amendment (No. _____) proposed by

Viz:

1 On page 5, strike lines 6 through 17, and insert the
2 following:

3 (d) METHODS OF NOTIFICATION; NOTICE CON-
4 TENT.—

5 (1) IN GENERAL.—A covered entity shall pro-
6 vide notice pursuant to subsection (c), by—

7 (A) written notice;

8 (B) electronic notice, if such notice is con-
9 sistent with the provisions of the Electronic

1 Signatures in Global and National Commerce
2 Act;

3 (C) substitute notice—

4 (i) if the covered entity demonstrates
5 that—

6 (I) the cost of providing such no-
7 tice would exceed \$250,000;

8 (II) the individuals to be notified
9 exceed 500,000; or

10 (III) the covered entity does not
11 have sufficient contact information for
12 the individuals to be notified; and

13 (ii) consisting of—

14 (I) notice by electronic mail when
15 the covered entity has an electronic
16 mail address for affected individuals;

17 (II) conspicuous posting of such
18 notice on the Internet web-site of the
19 covered entity, if such a web-site is
20 maintained by the covered entity; and

21 (III) notification to major State-
22 wide media of the breach of security.

23 (2) CONTENT OF NOTICE.—The notice required
24 under subsection (c) shall consist of—

1 (A) the name of the individual whose infor-
2 mation was the subject of the breach of secu-
3 rity;

4 (B) the name of the covered entity that
5 was the subject of the breach of security;

6 (C) a description of the categories of sen-
7 sitive personal information of the individual
8 that were the subject of the breach of security;

9 (D) the specific dates between the breach
10 of security of the sensitive personal information
11 of the individual and the date of discovery of
12 such breach of security; and

13 (E) the toll-free numbers necessary to con-
14 tact—

15 (i) each covered entity that was the
16 subject of the breach of security;

17 (ii) each nationwide credit reporting
18 agency; and

19 (iii) the Commission.

AMENDMENT NO. _____ Calendar No. _____

Purpose: To clarify the definition of sensitive personal information.

IN THE SENATE OF THE UNITED STATES—109th Cong., 1st Sess.

S. 1408

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Referred to the Committee on _____ and
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AMENDMENTS intended to be proposed by Mr. DEMINT to
the amendment (No. _____) proposed by

Viz:

- 1 On page 30, lines 13 and 14, strike “employer identi-
- 2 fication number” and insert “an employer identification
- 3 number that is the same as or is derived from the social
- 4 security number of that individual”.

Snowe Amendment #2

Clarification of limitation of preemption

On page 24, between lines 9 and 10, insert the following:

(e) LIMITATION OF PREEMPTION. – Federal preemption under this Act shall only apply to matters expressly described in subsections (a) through (d) of this section, and shall have no effect on other state or local jurisdiction over covered entities.

Boxer

5

AMENDMENT NO.

Calendar No.

Purpose: To amend the timing of notification to consumers.

IN THE SENATE OF THE UNITED STATES—109th Cong., 1st Sess.

S. 1408

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Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mrs. BOXER to
the amendment (No. _____) proposed by

Viz:

- 1 On page 5, line 23, strike "90" and insert "⁴⁵~~30~~".