

DATA SECURITY AND BREACH NOTIFICATION BILL WOULD HARM CONSUMERS

The Data Security and Breach Notification Act of 2015 would be a step backward for consumers. Consider the pros and cons:

The bill may be helpful because it would...

- **Buttress Federal Trade Commission authority.** The bill would clarify that the FTC unquestionably has the authority to enforce the reasonable security standard it already enforces. However, we believe the FTC's authority already rests on solid legal footing. The bill would also enable the FTC to penalize violators monetarily. But legal and enforcement actions brought by states, individuals, and the Federal Communications Commission already do that.

The bill is harmful because it would...

- **Eliminate stronger existing state protections.** Many state laws protect more information and require broader notifications. For example, medical information, login credentials for any online account, and photographs are protected in some states. If this bill passes, companies will no longer be required to secure and notify consumers of breaches of this information.
- **Eliminate critical flexibility to adapt to shifting threats.** This would stifle innovation occurring in state legislatures, which have been quick to update data security and breach notification laws to address evolving threats. For example, in response to growing medical identity theft, laws in nine states now protect health information not covered by HIPAA.
- **Eliminate key protections under the Communications Act.** Telecommunications, cable, and satellite are already covered by federal data security and breach notification protections stronger than what this bill offers.
- **Eliminate notification of breaches that could lead to physical or emotional harm.** The financial harm trigger in this bill is narrower than laws in 33 states and the District of Columbia. Breaches can lead to physical and emotional harm, not just financial harm and fraud. If a company fails to protect sensitive data, consumers should have the right to know about it—period.
- **Weaken state enforcement authority.** Limitations in this bill would greatly restrict the ability of state attorneys general to obtain meaningful relief. The bill would also eliminate consumers' private right of action in several states.

Contrary to its name, the Data Security and Breach Notification Act of 2015 would *weaken* consumer protections overall.

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