



U.S. Public Interest Research Group

National Association of State PIRGs

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RE: S 1178: The Inouye/Stevens/Pryor/Smith "Identity Theft Prevention Act."

Dear Member of The Senate Commerce Committee,

We are writing on behalf of the non-profit, non-partisan state Public Interest Research Groups, with one million members nationwide, to offer our views on the identity theft prevention legislation, S 1178, before the committee.

First, we want to commend the committee for a bill that includes numerous improvements to the bill marked up in the last Congress. We commend you for narrowing the scope of the bill's limits on stronger state laws, for improving the security freeze provision and for making that security freeze provision an explicit federal floor that allows stronger state laws. However, because the bill includes a weak data breach notice "risk trigger" that undercuts existing state laws, and because it still imposes some preemption on the states, we cannot support the bill without further amendments.

We commend the committee for the non-preemptive security freeze provision. Neither current federal rights nor the industry's heavily-promoted, over-priced credit monitoring products prevent identity theft before it starts. Only the security freeze does. Extending the provision nationwide, but allowing the states to do better, is a wise decision. For example, some states have enacted freeze laws with one-time only fees for all consumers, while other states have provided for a nearly-instantaneous temporary unfreeze or "lift." All states should have the right to enact stronger identity theft protections.

We appreciate that the data breach notice applies to both computerized and non-computerized data. Yet, we oppose the risk trigger in that data breach notice section. The provision undercuts over a dozen stronger state laws that provide for notice upon "acquisition" of non-public personal information including Social Security Numbers.

This not only fails to hold companies to a high enough standard that they would take remedial steps to prevent data loss in the first place, it does not guarantee that consumers will learn of the theft early enough to fight back. Studies have shown that the sooner you find out, the easier it is to clear your name. As for the importance of an acquisition-based standard, many experts believe that establishing such a high standard as is included in your bill might result in no notification at all.

Further, while the data breach section is notably more narrowly preemptive of stronger state privacy laws than last year's bill, it still preempts them. Since the states have always shown

the lead on privacy, we recommend elimination of all language preempting any stronger state laws from the bill.

We believe strongly that federal law should always serve as a floor, not a ceiling. States have demonstrated an ability to respond more quickly to privacy and other problems. Our philosophy on why preemption is unnecessary is simple: If Congress does a good enough job, it doesn't need to preempt, as states will move on to other issues. But if Congress fails to finish the job, the states are needed to step in. As for the industry's claims of a patchwork, the solution to that, in this case, would be to comply with those dozen strongest laws nationwide.

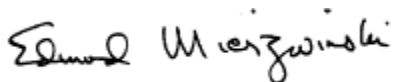
In addition, industry's allegations about compliance costs are without foundation; a firm can comply nationally simply by ensuring that its practices meet the standards of that one or several strongest state laws. (It should not be impossible to comply with both federal and state law. We do not, nor do other privacy or consumer groups, oppose any provision that would provide that a state law may not be inconsistent with the federal law, provided that it also says that a state law providing greater consumer protection is not inconsistent.)

We are extremely troubled that on a wide range of issues from air pollution to predatory lending to product safety to privacy, the Congress and the administration generally accept industry demands to eliminate fifty laboratories of public policy, as a condition of passing what often ends up to be a modest federal law.

We look forward to working with you on passing a strong final data security and identity theft law in the 110th Congress that protects consumers, and protects the right of the states to protect consumers.

Please contact me if you or your staff have any questions.

Sincerely,



Edmund Mierzwinski
Consumer Program Director