

# POLITICO

## House moving fast on data-breach standard

By Tony Romm

6/15/11 5:32 AM EDT

A bill that would require companies to secure the data they collect about their customers and inform users in the event of a breach could see speedy and possibly bipartisan passage in the House.

But that's not to suggest the road will be any easier to travel in the Senate.

It's a tale of two chambers: The draft data-breach bill released this week by Rep. Mary Bono Mack (R-Calif.) is picking up political momentum, and the lawmaker is pushing for passage in the House before the lengthy August recess.

Yet the forecast is different in the upper chamber. Even as top Senate lawmakers coalesce around the need for a federal data-breach law, members haven't settled on an approach, which makes delivering a bill more doubtful.

That's why all eyes are now on Bono Mack's Commerce, Manufacturing and Trade Subcommittee, which is set to take action first with a hearing Wednesday on her new draft.

An aide to the congresswoman told POLITICO this week that the subcommittee is "planning to stick to an aggressive timeline" in moving the legislation, "given the growing scope and nature of these data breaches."

"With a little luck and a lot of hard work, we hope to have our legislation passed out of the House by the August recess," the aide said. "Following tomorrow's hearing, Chairman Bono Mack expects to make some 'tweaks' to the bill before circulating it for co-sponsors. At the end of the day, we expect bipartisan support. This is a pro-consumer bill."

Most tech companies are likely to support Bono Mack's legislation, which was drafted following two subcommittee hearings on the breaches that allowed hackers to steal millions of customers' information from Sony and Epsilon.

The string of attacks recently targeting Citigroup, the International Monetary Fund and only last week, the Senate's own Web portal could even further heighten the interest of lawmakers in passing a data-breach bill.

Bono Mack's legislation itself tacks closely to a similar data-breach proposal put forth in the last Congress by Rep. Bobby Rush (D-Ill.). That bill, which built off previous Republicans' work, did clear the House on a bipartisan vote.

But the new proposal adds new language that would require companies to notify law enforcement within 48 hours of discovering a breach of a malicious nature. Those companies would then have to notify the FTC and their customers within 48 hours of determining the scope of what, if any, customer information was taken.

Failure to assess the scope of an attack within a reasonable timeframe, however, could result in FTC penalties, according to a subcommittee summary of the legislation released this week.

The hearing scheduled for Wednesday is not a markup; it will see top tech industry leaders and FTC Commissioner Edith Ramirez offer their thoughts on the bill. Big players scheduled to testify, such as the U.S. Chamber, will air general support for data-breach legislation while asking for tweaks to the bill's time window for notification and its language on preemption.

"The Chamber has always been a supporter of national, unified breach standard for data security," said Jason Goldman, telecommunications and e-commerce counsel for the group, adding he had "generally positive things to say" about the bill.

Yet, the session may set up what one tech lobbyist told POLITICO is an "enormous bipartisan vote" to clear it from the full Energy and Commerce Committee, possible in the next few months.

At the same time, data-breach work in the Senate is progressing far more slowly.

There's no shortage of interest in the upper chamber. A bill introduced last week by Sen. Patrick Leahy (D-Vt.), chairman of the Judiciary Committee, would seek to stamp out cybercrime while incentivizing companies that adopt adequate data-security standards. It also contains a reporting requirement.

But industry sources point out that Leahy's bill has been introduced in previous sessions, and has yet to advance.

Other efforts and differences in approach abound. Tech leaders expect Senate Commerce Committee Chairman Jay Rockefeller (D-W.Va.), for one, to introduce his own data-breach reporting bill in the coming days. The committee did not return a request for comment on the subject.

At the same time, the chamber's most prominent data-breach effort has remained tied to the Senate's larger cybersecurity reform push. If Democrats decide not to split the two issues, it could put the Senate on a collision course with the House — where top Republicans plan to take a more piecemeal approach, targeting specific security and privacy issues one by one.

The Senate also has another barrier to overcome: finding bandwidth and floor time for legislation.

Still, tech companies are generally supportive of federal data-breach efforts. Top players typically stand behind bills that preempt the current patchwork of state regulations — more than 40 in all — that currently govern how companies ought to treat server intrusions.

And some are beginning to line up behind Bono Mack's legislation in particular. That includes the Business Software Alliance which plans to signal at the hearing Wednesday that it supports the principles of her draft.

“This is now the fourth Congress to consider data breach legislation. The time to act is now. The need is clear, as are the solutions. BSA endorses the key provisions in the bill before us today,” Robert Holleyman, president and CEO of the BSA, will say in opening testimony.