

### Data Breach Legislation – Summary Chart

	HR 3997 Financial Data Protection Act	HR 4127 Data Accountability and Trust Act	S 1408 Identity Theft Protection Act	S 1789 Personal Data Privacy and Security Act	S 3568 Data Security Act (Bennett/Carper Bill)
<b>Risk-Based Trigger</b>	Yes – “harm or inconvenience” related to financial loss.	Yes – notice is not required if there is “no reasonable risk of identity theft, fraud, or other unlawful conduct.”	Yes – “reasonable risk of identity theft.”	Yes – notice is not required if there is “no significant risk of harm.”	Yes – “substantial harm or inconvenience.”
<b>GLBA Treatment</b>	Current GLBA rules superseded. Bank and credit union regulators to promulgate new rules based on GLBA model. Fed, Treasury and FTC to jointly issue similar rules for other entities.	Not clear – FTC can make determination whether GLBA or other federal law/rules “more protective” than this Act. If not, GLBA-institutions subject to both.	GLBA institutions deemed to be in compliance.	Data security requirements do not apply to those covered by GLBA. Notice provisions do apply.	GLBA financial institutions are deemed in compliance with the Act if they are in compliance with data protection, investigation and notice requirements and they are applied to all “consumer” information obtained by the institution.
<b>Enforcement</b>	Functional regulator.	FTC/state AG/functional regulators.	Exclusive by functional regulators.	State AG; no exclusive right for GLBA regulators.	Functional regulator for GLBA institutions. FTC for other entities.
<b>Preemption</b>	Yes – data security, investigation, notice, mitigation, credit freeze laws preempted. State laws governing professional confidentiality or privacy not preempted.	Somewhat – preempts state law expressly dealing with data security and notice. Does not preempt state consumer protection law enforcement by state AG or laws dealing with fraud.	Yes – state law on data security, notice, liability, security freeze, Social Security numbers.	Unclear – no state may require GLBA institutions to comply with security provisions; notice provisions supersede any state or federal law.	Yes – data security, investigation, notice, and mitigation are preempted.
<b>Security Freeze</b>	Yes – based on VT law: ID theft victim/written request as prerequisite.	No	Yes – any consumer can request in writing, by telephone or electronically. No ID theft prerequisite.	No	No

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Social Security Number Restrictions	No	No	Yes	No	No
Technology (Encryption) Safe Harbor	Presumption of no breach for encrypted data and similar technology except if the technology is compromised.	Rebuttable presumption for encryption or other technology that makes data unreadable.	Encryption considered in determination of risk of breach.	No	“Breach” does not include acquisition of information that is not usable – including information that is encrypted, redacted, altered, edited, or coded.
Criminal Penalties	No	No	No	Yes	No