

# The Virtual Lawyer

## Briefings on Technology and Business Law

### April 2009



## The Cybersecurity Act of 2009 Act III: Licensing “Cybersecurity Professionals”

### Legal Disclaimer

- Law is ever-changing. This briefing is a synopsis only and cannot substitute for personal legal advice. Everyone’s facts and circumstances are different and you should not rely on the contents of this publication to make substantive legal decisions. Please contact me for a further consultation.

When the right and the left agree on a particular piece of legislation, it always makes me sit up and take notice.

Both sides are taking a hard look at the **Cybersecurity Act of 2009** sponsored by Jay Rockefeller (D-WV), Bill Nelson (D-FL), and Olympia Snowe (R-ME). While the bill tries to address the important need to protect vital networks from cyber attack, it gives an awful lot of power to the executive branch — perhaps too much power.

In the first installment, we discussed the grant of power to the executive to shut down and degrade portions of the Internet and other networks and to obtain “vulnerability” information from private networks without a warrant.

In the second installment, we looked at the ability of the federal government to control software design, specifically, configuration settings in just about anything to do with security, including the operating systems, utilities and other “software”.

In this installment, we’ll cover what could be very important to your career: your licensure as a “cybersecurity professional” by the federal government. Let’s see. There’s Microsoft certification, Novell certification, and now there’s Federal certification—if you want to keep working on anything deemed “critical” by the federal government, that is.

First, let’s take a look at the actual proposed statute itself.

### SEC. 7. LICENSING AND CERTIFICATION OF CYBERSECURITY PROFESSIONALS

(a) **IN GENERAL.**— Within 1 year after the date of enactment of this Act, the Secretary of Commerce shall develop or coordinate and integrate a national licensing, certification, and periodic recertification program for cybersecurity professionals.

(b) **MANDATORY LICENSING.**— Beginning 3 years after the date of enactment of this Act, it shall be unlawful for any individual to engage in business in the United States, or to be employed in the United States, as a provider of cybersecurity services to any Federal agency or an information system or network designated by the President, or the President’s designee, as a critical infrastructure information system or network, who is not licensed and certified under the program.

And let’s also make sure we understand some of the definitions involved. Like, say, what’s a “Federal Government and United States critical infrastructure information system and network”. The definition includes:

(A) Federal Government information systems and networks; and

(B) State, local, and nongovernmental information systems and networks in the United States designated by the President as critical infrastructure

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## **The Cybersecurity Act of 2009: Professional Licensing, continued**

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### **information systems and networks.**

As the draft states, if you're going to do "security" work on a federal system or just about any other kind of system that might be designated as "critical" infrastructure by Presidential decree, you're going to have to get licensed by the Commerce Department.

But the "what" and "how" of any licensing scheme is left to the bureaucrats to cook up within a year after passage of the Act. You guessed it, that means regulation—lots of it. And I have grave doubts that the bureaucrats will come up with something that works—or that can be implemented in any reasonable time. How that licensing scheme is decided will doubtless become a political football pitting large software and network integrators against smaller players who just want to make a living.

Then there's the actual knowledge base required for licensing. Will the government require coursework and standard curricula? How long will the process last? Who knows.

Then there's the matter of what will be considered "critical infrastructure". InfraGard members were recently told that the Feds consider communications, financial services, health care, agriculture, transportation, education, utilities, energy and first responders all "critical". What's left?

For the Feds, however, failing security grades are the rule, not the exception. They can't even keep their own house in

order. Now the Feds want to tell information security professionals if they are qualified to do their job and how to do their job. This is pure chutzpah.

The movement to pass laws to regulate IT security professionals at the state level has passed in a few states. The Texas law has resulted in actions against IT professionals at computer retailers.

For a preview of the political battle brewing over this bill, consider what happened in Nevada when it tried to license IT professionals.

In Nevada the legislature proposed a similar bill in 2007 to regulate the work of IT professionals. It was spearheaded by the private investigator's lobby. As introduced, that bill would have required certain IT professionals to buy and be certified by the vendors of select commercial software. The Nevada bill passed the state senate committee and was only stopped by the determined and focused efforts of IT security professionals in Northern Nevada.

Only among regulators and those trying to limit competition do such measures enjoy any degree of support.

Please call you congress-person and urge them not to support this bill. It could very well mean your livelihood.

In addition, I've posted the entire draft act on my web site, which you can obtain here.

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