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January 30th, 2018

Senator William Coley  
Chairman, Ohio Senate Government Oversight and Reform Committee  
Senate Building  
1 Capitol Square, 1st Floor  
Columbus, Ohio 43215

**RE:** Opponent Testimony against Senate Bill 220 by Emily White, Managing Partner  
DannLaw Columbus Ohio Before the Ohio Senate Government Oversight and  
Reform Committee, January 31. 2018

Chairman Coley, Vice Chairman Uecker, and Ranking Member Schiavoni,

My Name is Emily White and I am the managing Partner in the Columbus office of  
Dannlaw. I appear today to oppose the enactment of SB 220 in its current form.

My colleagues and I have been involved in litigation involving some of the most  
egregious data breaches over the past year. In addition to bringing suit on behalf of Ohio  
Consumers against Equifax who has admitted perhaps the largest data breach in American  
History, my partner Marc Dann is the Liaison Counsel, and on the Plaintiff's Steering Committee  
in the consolidated class action lawsuit against Sonic, a company who allowed the credit card  
information of millions of people to be compromised. We also represent plaintiffs similar actions  
against Whole Foods, who suffered a similar data breach last fall and Alteryx, a California  
company that put some of the most personal data of Ohioans into an open bucket on an  
"Amazon data server accessible to anyone for over a week. Alteryx aggregates personal, credit  
information, Facebook and Google data that it sells to its clients who wish to narrowly profile  
potential customers.

What these cases have in common is that cyber criminals operating in a dynamic and fast  
changing environment. The tactics of such criminals requires companies that care about

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protecting their customer's most personal information to protect that data in a dynamic and fast changing way.

While we appreciate the attempt of the sponsor of this bill and this committee to encourage Ohio business to protect Ohio consumers from data breaches, the approach proposed in this bill may actually make it more likely that future data breaches will negatively impact consumers in Ohio. It will certainly make it more difficult for those consumers to recover damages that they may suffer as a result of negligent and reckless behavior by companies charged with protecting our data in the future.

A responsible company determined to protect its customers' data must be as proactive and dynamic in its approach as the criminals who are attempting to hack their systems and steal that data. Encouraging Ohio business people to rely on static, slow changing industry standards and creating a safe harbor for those companies against lawsuits will actually discourage those companies from taking the day to day or hour to hour measures to counter the ever evolving threats by domestic and foreign criminals who seek the lucrative profits in trafficking in all of our personal data.

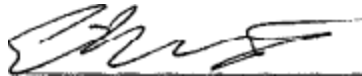
If this committee is determined to create a safe harbor for some Ohio business against litigation, it should consider amending this bill to give data breach victims meaningful tools to seek compensation from those companies who do not follow the safe harbor standards. 16 states currently have established a private right of action with statutory damages and shifting attorneys fees for negligent or reckless conduct that results in a data breach. This could be accomplished by explicitly making including negligent or reckless loss of the personal information of customers actionable under the Ohio Consumer Sales Practices Act or creating a new statute with statutory damages. Because the initial damages to consumers are often small on an individual basis, a statutory prohibition on class action waivers or arbitration agreements limiting claims relating to such conduct would also make sure that compliant companies are rewarded and those that don't take these real threats seriously are held accountable for risking the personal and financial security of Ohio citizens.

I respect the good intentions of this legislation But if the legislature would like to seriously address this growing threat to the personal and financial security of Ohioan, the provisions of this bill, despite the best of intentions may actually make our personal data less secure. This problem deserves a comprehensive approach, creating realistic rewards for those

companies who do the right thing for the customers and real consequences for those who do not. Unfortunately this bill in its current form may actually result in the opposite outcome.

I'm happy to answer your questions.

Sincerely,



Emily White, Esq.

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