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June 26, 2018

The Honorable Louis W. Blessing III
Chairman, House Government Accountability & Oversight
Committee

Ohio House of Representatives
77 South High Street, 11th Floor
Columbus, Ohio 43215

Via Email:

GovernmentAccountability&OversightCommittee@ohiohouse.gov

RE: Senate Bill 220 Support

Dear Chairman Blessing:

On behalf of the nearly 8,000 members of the Ohio Chamber of Commerce, I write to you in support of Senate Bill 220; legislation that benefits Ohio's businesses and Ohio's business climate by incentivizing businesses to invest in, and maintain, reasonable cybersecurity measures to protect employee, customer, and other private information. The bill creates an affirmative defense for businesses who voluntarily invest in and improve their cybersecurity. It does not bar a lawsuit but provides the opportunity for a business to provide evidence that reasonable policies and protections were in place to prevent the breach and, essentially, provides guidance as to what is reasonable. Judges and juries would still decide, depending on the unique facts and evidence of a case, whether the business meets its burden to raise the affirmative defense provided under this bill.

SB 220 lays out the standards under which a business may utilize the safe harbor. The business's cybersecurity program must protect the security and confidentiality of consumers' personal information, protect against any anticipated threats or hazards to personal information, and protect against unauthorized access of personal information that is likely to result in material risk of identity fraud. The bill states that businesses must not only create but maintain a written cybersecurity program that meets the administrative, technical, and physical safeguards for the protection of personal information guidelines or framework created by the National Institute of Standards and Technology (NIST) or other industry cybersecurity framework described in the bill. The bill goes on to provide five factors to evaluate the reasonableness of the business's program including size and complexity of the business, the resources available to the covered entity, and the nature of the personal information to be protected. This allows for scalability across the spectrum of businesses in the state—from small businesses to Fortune 500 companies.

The bill takes into account the differing nature and needs of businesses throughout the state by allowing the business to choose the framework that makes the most sense for that particular business. While providing flexibility, it also provides accountability by requiring businesses to continually update the processes and procedures of their programs as those frameworks are updated. The bill provides businesses with one year from the effective date of any updates to make the necessary changes.

At the same time, SB 220 is truly voluntary and does not create minimum standards that all businesses in the state would be required to follow. Importantly, the legislation explicitly states that the bill does not create a new cause of action against businesses that choose not to institute a cybersecurity program under this section. Those that choose not to would simply be unable to raise the affirmative defense in a data breach lawsuit.

At the end of the day, everyone wants their personal information to be protected. This bill provides additional incentive for businesses to voluntarily invest in programs to protect personal data and requires routine maintenance of the programs and procedures. This legislation will build upon the work already done to improve Ohio's legal climate. We appreciate the work of Ohio Attorney General Mike DeWine through the CyberOhio Initiative for spurring this conversation and Senators Hackett and Bacon for bringing forward this legislation.

For these reasons, we urge you to support SB 220. Please feel free to contact me if you have any questions regarding our support at dboyd@ohiochamber.com or (614) 629-0916.

Respectfully,



Don Boyd
Director, Labor & Legal Affairs
Ohio Chamber of Commerce