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Good morning, Chairman Blessing, Representative Clyde, and members of the Committee. My name is Marc Dann. I am pleased to have the opportunity to offer opponent testimony on Senate Bill 220. I appear before you today as both the founding partner of DannLaw, one of Ohio's leading consumer protection law firms and as a representative of both the National Association of Consumer Bankruptcy Attorneys and the National Association of Consumer Advocates.

NACA is a national nonprofit association comprised of more than 1,500 private, public sector, and legal services attorneys, law professors, and law students whose primary focus is protecting and representing consumers, particularly those of modest means.

Mr. Chairman, members of the committee, my opposition to HB 220 is grounded in the unique perspective and expertise I and members of my firm have gained by representing clients negatively impacted by data breaches. We were among the first law firms in the nation to file suit against Equifax after the company exposed the personal data of more than 147 million Americans to cybercriminals—and then hid the fact that the breach had occurred for weeks.

I am a member of the Plaintiff's Steering Committee and have been appointed Liaison Counsel in the consolidated class action lawsuit filed against Sonic after that company allowed the credit card information of potentially millions people to be compromised. We also represented consumers affected by the Whole Foods data breach and we are involved in legal action against Alteryx, a California-based firm that aggregates and sells personal and credit information as well as Facebook and Google data to companies that wish to narrowly profile potential customers. The Alteryx case is especially pertinent to our discussion of HB 220 because the company placed extremely sensitive personal data of Ohioans into an open bucket on an Amazon data server that was accessible to anyone for more than a week.

I wish I could stand here and tell you that companies, cybersecurity experts, and law enforcement were gaining control of the situation. Unfortunately, the opposite is true. According to the non-profit Identity Theft Resource Center, the number of U.S. data breach incidents hit a new record high of 1,579 during 2017, an increase of 44.7 percent over the record high figures reported for 2016. In all, the personal information of 178,955,069 Americans was put at risk last year.

That data belonged to people like our client, military veteran Michael Pircio who testified against this bill in the Senate who because of the short notice of today's hearing and possible vote is not

able to be here today. Mr. Pircio became a victim of identity theft when a USAA customer service representative carelessly gave a man who claimed to be Michael access to his account by creating a new username and password over the phone—even though the caller repeatedly failed to answer required security questions. Because USAA was also Michael's insurance company, the thieves not only stole his money, they obtained his driver's license number, the squadron he served with, his former duty title and current address. While all that is bad, here's what's really scary: because Michael is medically retired he is permitted to enter military installations using his account information. That info is now in the hands of cybercriminals who can sell it for thousands of dollars on the black market.

That means USAA's mistake didn't just put a brave veteran's bank account at risk, it jeopardized national security. And I can assure you that what happened to Michael is not an isolated incident.

That is why those of us who fight for justice on behalf of data breach victims are disappointed in and opposed to SB 220. At a time when we should be demanding more accountability and transparency from companies like Equifax, Uber, Sonic, Gamestop, Arby's, Dow Jones, and Facebook, HB 220 creates a safe harbor for businesses while exposing consumers to growing risk and devastating consequences.

You don't have to take my word for it, just read the legislative intent of the bill as summarized by LSC:

The bill states that its purpose is to establish a legal safe harbor to be pled as an affirmative defense,…It also states the bill is intended to be an incentive and to encourage businesses to achieve a higher level of cybersecurity through voluntary action. It does not, and is not intended to, create a minimum cybersecurity standard that must be achieved, nor may it be read to impose liability upon businesses that do not obtain or maintain practices in compliance with the bill.

While we regard HB 220 as a missed opportunity and a threat to consumers, I do want to offer a proposal that will make the bill more palatable. It is a free-market regulatory solution that you probably would expect from a known Democrat like me. Add a provision to SB 220 that would give individuals impacted by a data breach the opportunity to ask the Attorney General to bring a claim against those responsible for that data breach. Should the AG choose not to bring action within 60 days of the request, that individual may bring such a claim on behalf of the State of Ohio under existing law for the benefit his or herself and other similarly situated consumers are protected. The state would then split the recovery with the impacted consumers and the statute would allow for attorneys fees to be shifted to the prevailing party. It is a win, win and would make the creation of the affirmative defense in SB 220 make much more sense. The state receives additional revenue without having to spend a dime to police this growing problem.

As I mentioned earlier, the number of data breaches is increasing exponentially. The state does not have the resources to pursue even a small portion of them and the bill as currently constructed will do little if anything to stem the tide of cybertheft. Empowering Ohioans to fight this scourge with the help of private attorneys will not only provide a real incentive for businesses to protect sensitive data, it will ensure that consumers like Michael Pircio are made whole for the damages they suffer, generate revenue for the state, and make Ohio a safer place for all of us to do business. I urge you to give this proposal serious thought before moving the bill.

Again, thank you for giving me the opportunity to appear before you today. I will be happy to answer any questions you may have.

Sincerely,

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