

January 18, 2018

Chairman Lance Russell  
State Capitol  
500 E. Capitol Ave  
Pierre, SD 57501  
[Lance.Russell@sdlegislature.gov](mailto:Lance.Russell@sdlegislature.gov)

**Re: Senate Bill No. 62 (Data Breach)**

Dear Chairman Russell:

The Electronic Transactions Association (“ETA”) opposes the SB 62 because it represents an additional hurdle in building a national uniform data breach notification framework. If enacted, SB 62 would likely cause consumer confusion and increase costs to small businesses that are victims of data breaches. ETA and its members are dedicated to working with federal and state regulators to address the important and growing issue of data security and data breach notification. ETA agrees that delivery of proper notification to affected individuals when data is compromised is vitally important for both businesses and consumers. However, this bill, as written, is not the best vehicle in which to address data breach notification and ETA opposes SB 62.

ETA is the leading trade association for the payments industry, representing more than 500 companies worldwide involved in electronic transaction processing products and services. The purpose of ETA is to influence, monitor, and shape the payments industry by providing leadership through education, advocacy, and the exchange of information. ETA’s membership spans the breadth of the payments industry, and includes financial institutions, payment processors, independent sales organizations, and equipment suppliers. ETA’s members use data to provide a wide range of products and services designed to enhance and secure electronic transfers. Our members rely on data to help reduce fraud and to authenticate transactions to make transactions between businesses and consumers seamless and secure.

**GENERAL COMMENTS ON DATA BREACH NOTIFICATION**

***ETA Supports a National Uniform Data Breach Notification Standard***

Consumers and businesses are best served when they have a common and consistent expectation of breach procedures, and company time and resources can be devoted to innovative security solutions to protect against new threats. However, to build the most meaningful and effective data breach solution, it is imperative to tackle this issue with a

clear federal standard rather than a patchwork of state laws. Currently, disparate laws in 48 states plus District of Columbia, Guam, Puerto Rico, and the Virgin Islands, frustrate efficient and uniform breach notification to consumers.

### **SPECIFIC COMMENTS**

ETA opposes this bill for the reasons raised above, but we also have the following specific concerns regarding individual sections of the bill.

#### ***Lack of Notification Trigger***

This bill lacks a notification trigger provision for when a company that has been breached by a bad actor is required to notify consumers. These types of triggers are present in 40 of the 48 states that have data breach notification laws on the books. Without a trigger provision, consumers could become inundated with notifications for data breaches which do not have any likelihood of actual harm to the consumer. This transferring of responsibility from the company to the consumer to decide whether harm is likely, puts the decision making on the party with the least perfect information. Consumers would likely develop fatigue from an increase of notifications. Additionally, notification costs for companies are expensive and increasing the number of notifications would drive this high number even higher.

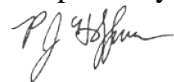
#### ***Private Right of Action***

While this bill does not, as currently drafted, provide for a private right of action, ETA opposes creating a new private right of action for data breaches. ETA looks forward to working with the Committee and the Attorney General's office to craft a solution that all sides could support, however that is unlikely if a private right of action were to be included in any new versions of this bill.

\* \* \*

ETA thanks you for the opportunity to submit comments on this important issue. If you have any additional comments, please contact me or ETA Senior Vice President of Government Affairs, Scott Talbott at [Stalbott@electran.org](mailto:Stalbott@electran.org).

Respectfully submitted,



PJ Hoffman  
Director of Regulatory Affairs  
Electronic Transactions Association  
[PJHoffman@electran.org](mailto:PJHoffman@electran.org)  
(202) 677-7417

Cc: Members of Senate Judiciary Committee