

January 30, 2019

Rep. Zack Hudgins
Chair
WA House Innovation, Technology & Economic Development Committee
438A Legislative Building
PO Box 40600
Olympia, WA 98504

Re: House Bill No. 1071 (Data Breach)

Dear Chairman Hudgins:

The Electronic Transactions Association (“ETA”) opposes the HB 1071 because it represents an additional hurdle in building a national uniform data breach notification framework. If enacted, HB 5064 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 HB 1071.

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.

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 50 states plus District of Columbia, Guam, Puerto Rico, and the Virgin Islands, frustrate efficient and uniform breach notification to consumers. This bill would provide requirements that significantly deviate from the general requirements in other states on this issue and placing Washington State as an outlier regarding data breach notification.

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.

Expanded Notification Requirements

This bill as currently drafted adds several unique notification requirements including a timeline of when a breach began, when it was discovered, the containment date, and all windows of intrusion. There are a few significant challenges with meeting these requirements.

First, given the 14-day timing requirement in order to provide notification to the Attorney General with these new requirements, companies which are victims of data breaches are unlikely to have all the information required to provide these new notifications to the Attorney General. If and when a company does have information regarding when a breach began, when it was discovered, the containment date, and all windows of intrusion, that information must be kept confidential by the Attorney General's office because it could provide information to potential cyber criminals about a company's cyber security program.

Second, the addition notification requirements for consumer regarding the timeline of when a breach began, when it was discovered, the containment date, and all windows of intrusion are likely to confuse consumers. This type of information is unlikely to be helpful for consumers directly and would certainly create information overload or confusion.

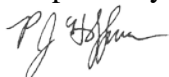
Private Right of Action

This bill as currently drafted provides for a private right of action for damages. 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.

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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.

Respectfully submitted,



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Cc: Vice Chair Shelley Kloba
Senator Joe Nguyen
Members of the House Innovation, Technology and Economic Development Committee