



1 Beacon Street, 16th Floor
Boston, MA 02108

www.aimnet.org | 617.262.1180 | fax 617.536.6785

May 14, 2018

Senator Barbara L'Italien, Senate Chair
Representative Tackey Chan, House Chair
Senator John Keenan
Senator Ryan Fattman
Representative Dan Hunt
Representative Randy Hunt
Boston, Massachusetts 02133

RE: AIM position regarding provisions contained in H.4241 and S.2455 relative to data breach.

Dear Chairwoman L'Italien, Chairman Chan and Members of the Committee of Conference:

On behalf of Associated Industries of Massachusetts (AIM) and the thousands of businesses we represent, I write to ask members of the committee of conference to consider our views as you move toward resolution of a final data breach bill.

As background AIM was integrally involved in the regulatory promulgation for the state's data breach laws (93H and 93I). As the committee deliberates it is important to remember that Massachusetts already has one of the most expansive laws in the nation that applies to the legislature, state agencies, municipalities and businesses alike. Our comments focus on addressing balancing consumer protections while preventing unintended consequences for businesses and residents.

Regarding the H.4241 and S.2455, AIM wishes to provide the following observations:

- **Section 3 of H.4241 and S.2455:** AIM urges further review of this language to ensure the underlying intent, which is to require consent for the purposes of obtaining a consumer report at the start of a transaction or relationship, but not for subsequent account maintenance or permissible activities related to an account. As proposed in the current proposals it could be read that a subsequent consent must be obtained for subsequent activities on an existing account, including account maintenance, collections activities, and other legitimate purposes. AIM urges that the language does not limit or require a business or customer to provide or authorize a subsequent consent requirement for the purposes of conducting business related to the same contract or purpose.
- **Section 15 of H.4241.** AIM urges that the conference committee to strike this language. This section requires notice to consumers the name of parent and affiliated corporations associated with the business where a breach occurred. While disclosure is important, this type of notice could create unintended consequences by allowing "bad actors" to learn of potential breach targets and attempt to infiltrate potentially vulnerable companies or vendors while corrective and preventative measures are put in place in response to a recent breach.
- **Section 2 of S.2455:** AIM urges the conference committee to strike this section in its entirety. This language would require the Office of Consumer Affairs and Business Regulations (OCABR) amend

current regulations to require that every entity covered by the state's data security laws (in-state and out-of-state businesses, state agencies, municipalities, and the Legislature) to certify affirmatively, under penalty of perjury, that the entity maintains an information security program that complies with state laws and regulations. AIM supports and helps businesses find resources to address data security issues, however this requirement is duplicative and overly burdensome.

- **Section 23 of S.2492 and Section 13 of H.4241:** AIM urges the conference committee to strike the last three sentences. These sections require that sample consumer notices be provided to the Office of the Attorney General and the Office of Consumer Affairs and Business Regulation in the event of a breach. Both bills require additional notice “as soon practicable and without unreasonable delay” upon learning of that information needs to be updated or corrected.
- **Section 24:** AIM prefers H.4241 requiring 1 year of credit monitoring.

Thank you for taking AIM's perspective into consideration. Should you have questions regarding these specific language changes please feel free to contact me at bmacdougall@aimnet.org or at 617-262-1180.

Thank you for your consideration.

Sincerely,



Brad MacDougall
Vice President for Government Affairs
Associated Industries of Massachusetts