



MEMORANDUM

TO: Members of the Senate Committee on Finance, Insurance, and Consumer Protection

FROM: Brian Shoaf, Detroit Regional Chamber
Joshua Lunger, Grand Rapids Chamber
Wendy Block, Michigan Chamber of Commerce
David Q. Worthams, Michigan Manufacturers Association
Amy Drumm, Michigan Retailers Association
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Kelli Saunders, Small Business Association of Michigan

DATE: October 9, 2024

Re: Business Community Concerns with Senate Bills 888-892

We write to you to share our collective concerns regarding Senate Bills 888-892, legislation that will make dramatic changes to Michigan's Identity Theft Protection Act (PA 452 of 2004). Our respective memberships have been working quickly to review the legislation and, while we are continuing to review the bills, we have several areas of concern that have been identified, including the following:

- Sec. 3–
 - *Definition of “person” and “data”* – We believe amending these definitions to reflect the fact that certain industries must already comply with comprehensive state and federal data privacy regulations. Avoiding overlapping mandates is an issue worth serious consideration.
 - *Definition of personal information* – Use of the word “any medical records or information” makes inclusion of this as part of the definition personal information too broad and too vague to assure compliance with the Act.

- *Sec. 11a* –
 - *Description of new security procedures/standards* – The bill establishes vague standards companies must use and implement for data security.
 - *“Reasonable security procedures”* is poorly defined and left to the subjective decision of the Attorney General or the Courts who must take into consideration variables such as the size of the company, the amount of information collected/owned, the type of activities the information is used for and the cost to implement security procedures. Without clarity on what is *“reasonable”*, it is hard to imagine how any business will be able to comply with the Act moving forward. Further, given the scale and size of a data network, it might not be possible to assess the entirety of a company’s system, especially if a third-party agency is involved.
 - Mandating that a company is to contractually require each third-party service provider to maintain an appropriate security system may be unenforceable and, at the least, lacks the flexibility necessary to enforce such contract language.

- *Sec. 12* –
 - *Changes to Notification Requirements* – There are several considerable changes made to the Act’s notification requirements that are concerning and take Michigan out of alignment with practices in most other states. For example, most other states require a notice be given to their attorneys general when 250 – 500 residents have been impacted by a breach.
 - Requiring notification within 45 days after *“the discovery of the security breach”* as opposed to *“confirmation”* or *“determination”* of a breach does not recognize that there are situations where it takes time to confirm a security breach and to interpret the information about a breach after a situation is discovered.
 - Credit monitoring of 24 months is outside of the 12-month standard found in other states.
 - Removing the applicability date of July 2, 2006, opens the question of business with breaches before this date will now be liable under the Act.

- *Secs. 20, 20a, 20b, 20c* –
 - *Expansion of Attorney General Powers.* While we appreciate the desire of the Attorney General to enhance their ability to enforce the Act, the new powers and excessive penalties included in these new sections are untenable and will have a significant negative impact on Michigan’s ability to compete for potential business expansions or attract new business opportunities.

We urge the committee to closely review the language of this bill and to work with the business associations included in this letter to find a path to balance both the protection of Michigan’s customers and the ability of businesses to comply with this Act while competing for growth in the state.

Thank you for your consideration of our concerns. Please contact any of the individuals in this memo with questions.