



**TO: Members of the House of Representatives Commerce Committee
Hon. Mark K. Keller, Chair
Hon. John T. Galloway, Democratic Chair**

FROM: John Holub, Executive Director

DATE: February 21, 2020

RE: HB 1010

On behalf of the Pennsylvania Retailers Association (PRA), I would like to express our **strong opposition** to HB 1010, which requires certain entities to provide notification of a breach of personal information.

To be perfectly clear, retailers across the Commonwealth have always made it a priority to protect the personal information of their customers that has been entrusted to them and they have made enormous capital investments over the years to do just that. It should come as no surprise, the absolute last thing any retailer wants to happen is to lose the trust of their customers.

As you are also aware, the retail industry is experiencing a transformative and innovative period like no other it has seen before. Thanks to exciting technological advances, our members are able to meet customer expectations for personalization and a seamless experience between mobile, online and in-store shopping. It is imperative that policy makers do not restrict the benefits and services customers currently enjoy in their relationships with retailers, nor those that will be developed in the future. Any legislative solutions that seek to protect an individual's personal information should be transparent for consumers and extend obligations to all businesses that handle personal data to ensure comprehensive protection.

Unfortunately, HB 1010 does not provide any added protection to consumers. It simply severely penalizes businesses that may have been breached, through no fault of their own, while at the same time exempting financial institutions and third-party service providers from any notification requirements. The legislation also provides the trial bar a potentially very lucrative revenue stream as well as exorbitant cost recovery mechanisms for financial institutions.

One of the most troubling aspects of this legislation is that it requires all consumer-facing businesses to notify all affected individuals of breaches of security -- even if the business is not at fault for the breach. Should this legislation advance, it must require EVERY business that handles personal information to have a statutory obligation to protect this information and honor consumers' rights with respect to it so that they are held accountable for their own violations of

those obligations. This legislation should not expose businesses to liability for privacy or security violations suffered by their business partners, service providers, and other third parties handling customers' personal information.

Furthermore, we are also troubled by the fact HB 1010 exempts all financial institutions and third-party service providers from any breach notification requirements. PRA does not support exemptions for businesses that have no other equivalent federal or state privacy obligation to protect data.

PRA is also categorically opposed to the provision in HB 1010 providing for private rights of action. Instead, we would support enforcement by the attorney general so that the interpretation and enforcement of any law you choose to pass can be consistently applied across the Commonwealth based on cases of actual harm. The attorney general has prosecutorial discretion and, unlike trial attorneys, is not motivated by personal remuneration in the decision to bring litigation. Additionally, we would support any provision that will provide a reasonable opportunity for businesses to cure defects in their compliance before facing any enforcement by the attorney general or private rights of action.

Lastly, PRA is very troubled by several aspects of the cost recovery provisions of the legislation. The attached letter to the U.S. House Energy and Commerce Committee from national trade associations which represent a broad range of card-accepting businesses explains how the cost recovery mechanisms for fraudulent card transactions work, and why provisions like the ones in HB 1010 are unnecessary and should be rejected as they have been repeatedly in the U.S. Congress and legislatures of many other states where financial institutions have pressed for such bills over the past decade. (*See attachment.*)

On behalf of the Pennsylvania Retailers Association, we sincerely thank you for the opportunity to comment on this important issue. We hope you will balance any legislative initiative that protects personal information with the legitimate interests of businesses who use information to better serve their customers. If we can be of further assistance, please do not hesitate to contact me at john@paretailers.org or (717) 233-7976.