



**Vincent Ryan**  
Legislative Director

February 12, 2020

The Honorable Delores G. Kelley  
Chair, Senate Finance Committee  
Miller Senate Office Building  
11 Bladen St  
Annapolis, MD 21401

**RE: Senate Bill 201 – Personal Information Protection Act Revisions**

Dear Senator Kelley:

The American Council of Life Insurers (the “ACLI”) appreciates the opportunity to present our concerns with Senate Bill 201 (“S. 201”) as it relates to consumer data breach protocols. Specifically, ACLI has concerns with § 14-3501 and § 14-3504 and recommends that the Committee submit an unfavorable report on S. 201. We have outlined our concerns with each section below.

**§14-3501 – Definition of “Genetic Test” and “Genetic Information”**

Section 14-3501 would add new definitions of “genetic test” and “genetic information” to the list of “personal information,” which would trigger a data breach notice if the security system was breached. ACLI has concerns with these definitions as they conflict with current definitions of “genetic test” and “genetic information” under §18-120 (a)-(b) of the Maryland Insurance Code.<sup>12</sup> Such consistency in the law helps to ensure carrier compliance between the Commercial and Insurance Codes in Maryland, while also enhancing consumer protection.

**§14-3504 – Timeframe for Notice to Consumer & Attorney General**

Section 14-3504 would significantly amend Maryland’s breach of security laws and completely change how and when a business notifies a consumer and the Attorney General of a data breach. The provisions contained in § 14-3504 are so significant we worry that there may be overreporting and consumer confusion. For example, § 14-3504 (b)(2) appears to change the “harm trigger” from “after the

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<sup>1</sup> § 18-120 (a): “‘Genetic information’ means information derived from a genetic test: 1. about chromosomes, genes, gene products, or inherited characteristics that may derive from an individual or a family member; 2. not obtained for diagnostic and therapeutic purposes; and 3. obtained at a time when the individual to whom the information relates is asymptomatic for the disease, disorder, illness, or impairment to which the information relates.”

<sup>2</sup> § 18-120 (b)“‘Genetic test’ means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes.

The Honorable Delores G. Kelley  
February 12, 2020  
Page 2

investigation is concluded” to “reasonably determines that the breach does not create a likelihood that the information will be misused.” Is an investigation still permitted? Is the investigation allowed to conclude or must the decision be made during an investigation?

In addition, the breach of security notice time frame is significantly altered under this section. Notice of a breach would have to be sent not later than thirty (30) days (as opposed to current law of 45) after the entity discovers or is notified of the breach of the security of a system. Is such notice to be given after the business determines that there is not a likelihood that the information will be misused, or every time a business discovers or is notified of the breach of the security of a system? If there is no likelihood of harm, is a notice required?

Insurers, and particularly life insurers, have been on the forefront of protecting consumers' data and information for well over 100 years. All states have laws in place that require businesses, including insurers, to notify consumers in the event of a data breach involving non-public information. Most of the states adopted laws similar to the approach California adopted many years ago, including Maryland. For the most part, these data breach laws are fairly uniform across the country. Consumers benefit from this uniform approach as they understand the importance of receiving a notice involving the breach of their data.

Adoption of § 14-3504 could cause adverse consequences for Maryland consumers. Laws that lower the thresholds for reporting and shorten the timeframe within which breach notification must occur could be alarming and confusing to Maryland consumers. More notification of “possible” breaches may make consumers immune to such notices and cause consumers not to take such notifications seriously.

Lastly, information to be added to the notice to the Attorney General pursuant to § 14-3504 (h)(2) under condensed timeframes is unreasonable and unduly burdensome. In addition, this specific type of information contained in the above-referenced section may not be available until a complete and thorough investigation is over. Timely and reasonable notice to consumers is our immediate concern.

### Conclusion

For the aforementioned reasons, ACLI respectfully requests that the Committee submit an unfavorable report on S. 201.

Thank you in advance for your consideration. I am available at your convenience to address any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Vincent J. Ryan", followed by a horizontal line.

VINCENT J. RYAN