



July 30, 2018

The Honorable Charlie Baker
Governor, Commonwealth of Massachusetts
Massachusetts State House, Room 280
Boston, MA 02133

Re: H.4806 - An act relative to consumer protection from security breaches

Dear Governor Baker:

I write on behalf of the American Financial Services Association (“AFSA”)¹ to raise our serious concerns with H.4806 and to register our opposition to the bill in its current form. Though AFSA shares the legislature’s goal of protecting Massachusetts citizens from the risks associated with a security breach, several provisions of the bill would impose significant new requirements that conflict with federal law and could raise the cost of credit in the state. The proposed requirements would create additional unnecessary burdens, with little added consumer benefit, for data already protected by federal law and existing industry best practices. We request that you return the bill to the General Court with proposed amendments to remove these provisions that could negatively affect consumers in Massachusetts who could face higher costs and more limited availability of credit.

Section 3 of H.4806 would require prior written, verbal, or electronic consent of a consumer before a credit data user may obtain, use or seek a consumer report. The user must also disclose the reason for access prior to the consent. Under existing federal law, financial institutions are authorized to access a consumer’s credit report for many reasons, including to determine whether to make a pre-approved offer of credit, or a pre-screened invitation to apply—typically when a consumer is NOT actively seeking credit. Review of a consumer’s file to provide pre-screened offers do not show up on the consumer’s credit report or affect the consumer’s credit score and have no negative effect on the consumer.

In fact, pre-approved offers and pre-screened invitations to apply make credit available to consumers who may need it in the near future and help make consumers more aware of credit options potentially available to them, lowering the transaction cost that would be otherwise required for a future credit search. Despite the consumer-friendly pre-screening process, under the requirements of this bill, such pre-screened offers or invitations would be prohibited, as consumers cannot provide consent in advance of an offer they do not know is coming. While H.4806 does exempt use of a consumer report for certain purposes already authorized under federal and state law and those involving existing customers, we believe this section should be

¹ Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans.

amended to account for ALL permissible purposes under 15 U.S.C. § 1681b and Mass. Gen. L. Ch. 93 Sec. 51.

For these reasons, we respectfully urge you not to sign this legislation as passed both houses and instead propose amendments clarifying the permissible purposes for accessing consumer credit reports and return the bill to the legislature. Thank you in advance for your consideration of our comments. If you have any questions or would like to discuss this further, please do not hesitate to contact me at 202-469-3181 or mkownacki@afsamail.org.

Sincerely,

A handwritten signature in blue ink that reads "Matthew Kownacki". The signature is written in a cursive style with a small flourish at the end.

Matthew Kownacki
Manager, State Research and Policy
American Financial Services Association
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