OHIO LEGISLATIVE SERVICE COMMISSION

Robert Meeker

Fiscal Note & Local Impact Statement

Bill: S.B. 220 of the 132nd G.A. **Status:** As Enacted

Sponsor: Sens. Hackett and Bacon **Local Impact Statement Procedure Required:** No

Subject: Provides legal safe harbor to covered entities with specified cybersecurity program

The bill has no direct fiscal effect on the state and a potential savings effect on the annual operations of common pleas, municipal, and county courts.

The bill establishes a legal safe harbor for covered entities (certain businesses and nonprofit entities) that create, maintain, and comply with a written cybersecurity program which contains administrative, technical, and physical safeguards for the protection of personal or restricted information provided that the program satisfies the bill's requirements. The bill's safe harbor is an affirmative defense to any tort action against a covered entity alleging the failure to implement reasonable information security controls resulting in a data breach. A tort action against a covered entity alleging damages resulting from a data breach would be filed in a local trial court, either a municipal, county, or common pleas court depending on the value of damages sought.[1]

As a result of the bill's affirmative defense, two potential effects on local trial courts seem plausible. First, the existence of an affirmative defense may reduce the likelihood that certain plaintiffs file an action. Second, once it determines that a covered entity's cybersecurity program is compliant, the court may be able to more promptly dispose of a case than it otherwise might have under current law. Either outcome creates a savings effect by reducing the court's docket and permitting court personnel to work on other matters.

The frequency with which torts alleging data breaches are currently being filed in local Ohio courts is not readily available. Such information does not appear to be systematically recorded or reported. It has been suggested that, given the often national reach of data breaches, actions are more likely to be filed in federal courts rather than Ohio's local trial courts.

[1] Municipal and county courts generally have jurisdiction in civil actions for the recovery of sums not exceeding $15,000 (R.C. 1901.07 and R.C. 1907.03, respectively). Amounts exceeding $15,000 are generally the jurisdiction of the courts of common pleas (R.C. 2305.01).

Additionally, the bill: (1) modifies the definition of key employee as it relates to the Casino Gaming Law removing the discretion of the Casino Control Commission in determining whether an individual is a key employee if their duties or status vary from the definition described in the law, and (2) allows transactions recorded by blockchain technology under the Uniform Electronic Transactions Act. LSC fiscal staff believes that these provisions have no direct fiscal effect on the state or political subdivisions.