



March 8, 2024

The Honorable Todd Jones  
416-B State Capitol  
Atlanta, GA 30334

Dear Chairman Jones:

BSA | The Software Alliance<sup>1</sup> supports strong privacy protections for consumers and appreciates the work of the House Committee on Technology & Infrastructure Innovation to improve consumer privacy through SB 473, the Georgia Consumer Privacy Protection Act. In our federal and state advocacy, BSA works to advance legislation that ensures consumers' rights — and the obligations imposed on businesses — function in a world where different types of companies play different roles in handling consumers' personal information. At the state level we have supported strong privacy laws in a range of states, including consumer privacy laws enacted in Colorado, Connecticut, and Virginia.

BSA is the leading advocate for the global software industry. Our members are enterprise software and technology companies that create the business-to-business products and services to help their customers innovate and grow. For example, BSA members provide tools including cloud storage services, customer relationship management software, human resource management programs, identity management services, and collaboration software. Businesses entrust some of their most sensitive information — including personal information — with BSA members. Our companies work hard to keep that trust. As a result, privacy and security protections are fundamental parts of BSA members' operations.

We appreciate the opportunity to share our feedback on SB 473. While we commend the legislature's work in advancing consumer privacy legislation, we are concerned that the bill, as amended and passed by the Senate, departs from other state privacy laws in ways that do not provide clear benefits to Georgia consumers. As the committee considers SB 473, we urge you to ensure that where Georgia departs from those other laws, it does so in a manner that makes a meaningful contribution to the larger landscape in protecting consumers, rather than diverging without a clear advantage for consumer privacy. Our feedback below focuses on our core priorities in the legislation: creating privacy protections that are interoperable with other state laws and recognizing the unique role of data processors.

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<sup>1</sup> BSA's members include: Adobe, Alteryx, Asana, Atlassian, Autodesk, Bentley Systems, Box, Cisco, CNC/Mastercam, Databricks, DocuSign, Dropbox, Elastic, Graphisoft, Hubspot, IBM, Informatica, Kyndryl, MathWorks, Microsoft, Okta, Oracle, PagerDuty, Palo Alto Networks, Prokon, Rubrik, Salesforce, SAP, ServiceNow, Shopify Inc., Siemens Industry Software Inc., Splunk, Trend Micro, Trimble Solutions Corporation, TriNet, Twilio, Workday, Zendesk, and Zoom Video Communications, Inc.

## I. BSA Supports an Interoperable Approach to Privacy Legislation.

As an initial matter, we appreciate the efforts to harmonize the structural aspects of SB 473 with existing state privacy laws. In particular, we appreciate the harmonized approach taken in aligning many of SB 473's provisions with the Tennessee Information Protection Act, which is modeled on the Virginia Consumer Data Protection Act. BSA supported Virginia's privacy law and has supported strong state privacy laws across the country that build on the same structural model of privacy legislation enacted in Virginia.

While we support the approach SB 473 takes in creating new rights for consumers and establishing a range of obligations for businesses that require them to handle data responsibly, the bill, as passed by the Senate, departs from requirements under other state privacy laws in ways that may be inadvertent or unintentional. We encourage you to further refine the bill in two areas in which interoperability is particularly important:

- *Enforcement:* The bill's enforcement provisions should be refined to promote interoperability with other state privacy laws by establishing exclusive enforcement authority in the state Attorney General and clarifying that nothing in the law establishes a private right of action under it or any other law. Effective enforcement is important to protecting consumers' privacy, ensuring that businesses meet their obligations, and deterring potential violations. BSA supports strong and exclusive regulatory enforcement by a state's Attorney General, which promotes a consistent and clear approach to enforcing new privacy obligations. State Attorneys General have a track record of enforcing privacy-related laws in a manner that creates effective enforcement mechanisms while providing consistent expectations for consumers and clear obligations for companies. As currently written, SB 473 does not explicitly provide for exclusive Attorney General enforcement. All state privacy laws provide state attorneys general with enforcement authority,<sup>2</sup> and we urge the Committee to adopt a similar approach.
- *Focus on consumers, not employees:* Because the bill is designed to protect consumer privacy, we recommend focusing SB 473 on consumers without also sweeping in employment-related data. SB 473 already recognizes its focus on consumers, rather than employees, by exempting individuals acting in an employment context from the definition of "consumer." However, the bill as passed by the Senate, does not contain a separate and specific exemption for employee or job applicant data, as the introduced version of the bill contained. We encourage you to adopt the approach taken in the bill as-introduced, which mirrors the approach of 13 state privacy laws<sup>3</sup> that focus on protecting consumer privacy and therefore exclude data processed or maintained in employment contexts from the scope of their application. This approach can help to ensure that privacy legislation focuses on providing strong privacy protections for individual consumers.

## II. Distinguishing Between Controllers and Processors Benefits Consumers.

Additionally, we support SB 473's clear recognition of the unique role of data processors. Leading global and state privacy laws reflect the fundamental distinction between processors, which handle personal information on behalf of another company, and

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<sup>2</sup> BSA | The Software Alliance, 2023 Models of State Privacy Legislation, available at <https://www.bsa.org/policy-filings/us-2023-models-of-state-privacy-legislation>.

<sup>3</sup> *Id.*

controllers, which decide when and why to collect a consumer's personal information. Indeed, all states with comprehensive consumer privacy laws recognize this critical distinction.<sup>4</sup> In California, the state's privacy law for several years has distinguished between these different roles, which it terms businesses and service providers, while all other state comprehensive privacy laws use the terms controllers and processors.<sup>5</sup> This longstanding distinction is also built into privacy and data protection laws worldwide and is foundational to leading international privacy standards and voluntary frameworks that promote cross-border data transfers. BSA appreciates SB 473's incorporation of this globally recognized distinction.

Distinguishing between controllers and processors better protects consumer privacy because it allows legislation to craft different obligations for different types of businesses based on their different roles in handling consumers' personal information. Privacy laws should create important obligations for both controllers and processors to protect consumers' personal information — and we appreciate SB 473's recognition that those obligations must reflect these different roles. For example, we agree with the bill's approach of ensuring both processors and controllers implement reasonable security measures to protect the security and confidentiality of personal information they handle. We also appreciate the bill's recognition that consumer-facing obligations, including responding to consumer rights requests and seeking a consumer's consent to process personal information, are appropriately placed on controllers, since those obligations can create privacy and security risks if applied to processors handling personal information on behalf of those controllers. Distinguishing between these roles creates clarity for both consumers exercising their rights and for companies implementing their obligations.

Thank you for your continued leadership in establishing strong consumer privacy protections, and for your consideration of our views. We welcome an opportunity to further engage with you or a member of your staff on these important issues.

Sincerely,



Matthew Lenz  
Senior Director and Head of State Advocacy

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<sup>4</sup> BSA | The Software Alliance, *The Global Standard: Distinguishing Between Controllers and Processors in State Privacy Legislation*, available at <https://www.bsa.org/files/policy-filings/010622ctrlrprostatepriv.pdf>.

<sup>5</sup> See, e.g., Cal. Civil Code 1798.140(d, ag); Colorado CPA Sec. 6-1-1303(7, 19); Connecticut DPA Sec. 1(8, 21); Delaware Personal Data Privacy Act, Sec. 12D-102(9, 24); Florida Digital Bill of Rights Sec. 501.702((9)(a)(4), (24)); Indiana Senate Enrolled Act No. 5 (Chapter 2, Sec. 9, 22); Iowa Senate File 262 (715D.1(8, 21)); Montana Consumer Data Privacy Act Sec. 2(8,18); New Jersey Senate Bill 332/Assembly Bill 1971 (Section 1); Oregon CPA Sec. 1(8, 15); Tennessee Information Protection Act 47-18-3201(8, 20); Texas Data Privacy and Security Act Sec. 541.001(8, 23); Utah CPA Sec. 13-61-101(12, 26); Virginia CDPA Sec. 59.1-575.