



March 1, 2023

The Honorable Giovanni Capriglione
Texas State Capitol
1100 Congress Ave
Austin Texas 78701

Dear Representative Capriglione:

BSA | The Software Alliance¹ supports strong privacy protections for consumers and appreciates your work to improve consumer privacy through HB4, the Texas Data Privacy and Security 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 data. 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 data — 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, and their business models do not depend on monetizing users' data.

BSA appreciates the opportunity to share our feedback on the Texas Data Privacy and Security Act. We are writing to express our support for your bill's recognition of two of our core priorities: recognizing the unique role of data processors and creating privacy protections that are interoperable with other state laws. Leading global and state privacy laws reflect the fundamental distinction between processors, which handle personal data on behalf of another company, and controllers, which decide when and why to collect a consumer's personal data. Every state enacting a comprehensive consumer privacy law has incorporated this critical distinction. In Colorado, Connecticut, Utah, and Virginia, state privacy laws assign important — and distinct — obligations to both processors and controllers.² In California, the state's privacy law for several years has distinguished between these different roles, which it terms businesses and service providers.³

Distinguishing between controllers and processors better protects consumer privacy because it allows legislation to craft different obligations for different types of businesses

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

² See, e.g., Colorado's CPA Sec. 6-1-1303(7, 19); Connecticut DPA Sec. 1(8, 21); Utah CPA Sec. 13-61-101(12, 26); Virginia CDPA Sec. 59.1-575.

³ See, e.g., Cal. Civil Code 1798.140(d, ag).

based on their different roles in handling consumers' personal data. Privacy laws should create important obligations for both controllers and processors to protect consumers' personal data — and we appreciate HB4'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 data 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 data, are appropriately placed on controllers, since those obligations can create privacy and security risks if applied to processors handling personal data on behalf of those controllers. Distinguishing between these roles creates clarity for consumers exercising their rights and for companies implementing their obligations.

Additionally, we would like to express support for your efforts to ensure that HB4 promotes uniformity and clarity in this critical area of state law. Privacy laws around the world need to be consistent enough that they are interoperable, so that consumers understand how their rights change across jurisdictions and businesses can readily map obligations imposed by a new law against their existing obligations under other laws. We commend you for drafting HB4 in a manner that creates privacy protections that are interoperable with protections included in other state privacy laws. Interoperable approaches to privacy help to drive strong business compliance practices that can better protect consumer privacy.

We also express support for HB4's focus on protecting the privacy of consumers and excluding employment data from the bill's scope and from its definition of "consumer." This approach ensures that HB4 focuses on consumers, who face distinct privacy-related concerns from those raised by employees. It also aligns HB4 with state privacy laws in Colorado, Connecticut, Utah, and Virginia, which focus on protecting consumer privacy.

Finally, we support for HB4's approach to enforcement, which provides the Attorney General with exclusive authority to enforce the bill. BSA supports strong and exclusive regulatory enforcement by the Attorney General's office, which promotes a consistent and clear approach to enforcement.

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