March 15, 2023

Representative Jerry Torr
Chair, House Judiciary Committee
200 W. Washington St.
Indianapolis, IN 46204

Dear Chair Torr:

BSA │ The Software Alliance[1] supports strong privacy protections for consumers and appreciates this committee's work to improve consumer privacy through Senate Bill No. 5 (SB5). 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.

We appreciate the opportunity to share our feedback on SB5. Our recommendations below focus on two of BSA's core priorities in the legislation: the bill's treatment of processors and its interoperability with other state laws.

    I.   **Distinguishing Between Controllers and Processors Benefits Consumers.**

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[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.

We are writing to express our support for SB5'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 data on behalf of another company, and controllers, which decide when and why to collect a consumer's personal data. Every state to enact 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] 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.[4] BSA applauds the sponsor, Senator Liz Brown, for incorporating this globally recognized distinction into SB5.

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 data. Privacy laws should create important obligations for both controllers and processors to protect consumers' personal data — and we appreciate SB5'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 both consumers exercising their rights and for companies implementing their obligations.

II.   SB5 Should Promote Interoperability with Other State Laws.

BSA also appreciates several aspects of SB5 that create privacy protections that are interoperable with protections created in other state privacy laws. We encourage the committee to prioritize creating strong privacy protections for consumers, including by drawing on privacy laws already enacted in other states.

As an initial matter, we appreciate the harmonized approach Senator Brown has taken in aligning many of SB5's provisions with the Virginia Consumer Data Protection Act. BSA supported the Virginia privacy law, which places clear obligations on businesses to handle

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[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).

[4] For additional information on the longstanding distinction between controllers and processors – sometimes called businesses and service providers – BSA has published a two-pager available here and attached to this letter.

consumers' personal data in responsible ways and gives new rights to consumers, including the rights to access, correct, delete, port, and confirm processing of their personal data, in addition to rights to opt out of targeted advertising, sale, and profiling. BSA has also supported the consumer privacy laws adopted in Colorado and Connecticut, which build on the same structural model of privacy legislation enacted in Virginia. Although SB5 diverges from Virginia's law in some areas, we strongly encourage the committee to create strong consumer protections that are interoperable with these existing laws.

We also want to express our support for SB5's focus on protecting the privacy of consumers, and excluding employment data from the bill's scope and from in its definition of "consumer." This approach ensures that SB5 focuses on consumers, who face distinct privacy-related concerns from those raised by employees. It also aligns SB5 with state privacy laws in Colorado, Connecticut, Utah, and Virginia, all of which focus on protecting the privacy of consumers.

Finally, we want to express our support for SB5'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 and Senator Brown for your thoughtful approach in establishing strong consumer privacy protections, and for your consideration of our perspective. BSA would be happy to provide further perspective on this legislation as it progresses through the legislative process.

Sincerely,

Matthew Lenz
Senior Director,
State Advocacy

CC: Senator Liz Brown; Representative Matt Lehman, Members of House Judiciary Committee