



February 1, 2021

The Honorable Janet Howell
Virginia State Capital
Senate Committee on Finance and Appropriations
P.O. Box 396
Richmond, VA 23218

Dear Chair Howell:

BSA | The Software Alliance¹ appreciates the opportunity to share with you our support of HB 2307 and SB 1392, the Virginia Consumer Data Protection Act, recently passed by the House of Delegates and currently under consideration by the Senate Finance and Appropriations Committee. BSA supports the enactment of a national comprehensive privacy law that provides consumers meaningful rights over their personal data and obligates businesses to handle personal data in line with consumers' expectations. In our federal and state advocacy, we have expressed strong support for consumer protections similar to many of those in the proposed Act. We commend your work to ensure that consumers' rights in their personal data – and the obligations imposed on businesses – function in a world where different types of companies play different roles in handling consumers' personal data.

BSA members are enterprise software companies that create the technology products and services that other businesses use. For example, BSA members provide business-to-business 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 are writing to express our support for the proposed Act's clear recognition of the unique role of data processors. Privacy laws worldwide reflect the fundamental distinction between data processors, which handle a consumer's personal data on behalf of other businesses, and data controllers, which decide how a consumer's personal data will be collected and used. For example, the European Union's General Data Protection Regulation ("GDPR") imposes different

¹ BSA is the leading advocate for the global software industry before governments around the world. Our members include: Adobe, Atlassian, Autodesk, Bentley Systems, Box, CNC/Mastercam, DocuSign, IBM, Informatica, MathWorks, Microsoft, Okta, Oracle, PTC, Salesforce, ServiceNow, Siemens Industry Software Inc., Sitecore, Slack, Splunk, Trend Micro, Trimble Solutions Corporation, Twilio, and Workday.

obligations on data processors than on data controllers, in light of their different roles in handling personal data. Similarly, the California Consumer Privacy Act (“CCPA”) and the California Privacy Rights Act (“CPRA”) distinguish between “businesses” that decide how data will be collected and used, and “service providers” that process data on behalf of such businesses. The distinction between data processors and data controllers is foundational not only to privacy laws across the globe, but also to leading international privacy standards and voluntary frameworks that promote cross-border data transfers.² We commend you and your colleagues for incorporating this global standard into the proposed Act, which clearly distinguishes between controllers and processors.

Distinguishing between controllers and processors is important from a privacy perspective, because it allows legislation to craft different obligations for different types of businesses based on their different roles in handling consumers’ personal data. That type of role-based responsibility improves privacy protections for consumers. We appreciate the proposed Act’s recognition that processors and controllers both have important responsibilities to protect consumers’ personal data — and that those obligations must reflect their different roles. For example, we agree with the Act that both processors and controllers must implement reasonable security measures to protect the security and confidentiality of data they handle. At the same time, we appreciate the Act’s recognition that consumer-facing obligations like obtaining and responding to consumer rights requests are appropriately placed on controllers, since those obligations can create privacy and security risks if applied to data processors handling data on behalf of those controllers.

Thank you for your continued leadership in establishing strong consumer privacy protections, and for your consideration of our views. As you are aware, this legislation has been crafted over several years with significant input from numerous stakeholders. BSA strongly encourages you and your colleagues on the Senate Finance Committee to support SB 1392 in its current form and without further amendment.

Sincerely,



Tom Foulkes
Senior Director, State Advocacy

² For example, privacy laws in Hong Kong, Malaysia, and Argentina distinguish between “data users” that control the collection or use of data and companies that only process data on behalf of others. In Mexico, the Philippines, and Switzerland, privacy laws adopt the “controller” and “processor” terminology. Likewise, the APEC Cross Border Privacy Rules, which the US Department of Commerce has strongly supported and promoted, apply only to controllers and are complemented by the APEC Privacy Recognition for Processors, which help companies that process data demonstrate adherence to privacy obligations and help controllers identify qualified and accountable processors. In addition, last year the International Standards Organization published its first data protection standard, ISO 27701, which recognizes the distinct roles of controllers and processors in handling personal data.