



February 7, 2022

The Honorable Michael Flood
1445 K St
Lincoln NE 68508

Dear Senator Flood:

BSA | The Software Alliance¹ supports strong privacy protections for consumers and appreciates your work to improve consumer privacy through LB1188, the Uniform Personal Data 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 data. At the state level we have supported strong privacy laws in a range of states, including the new consumer privacy laws enacted in Colorado and Virginia last year.

BSA is the leading advocate for the global software industry. Our members are enterprise software companies that create the business-to-business technologies that other businesses use. 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 LB1188, the Uniform Personal Data Protection Act. This bill adopts the Uniform Law Commission's (ULC's) model privacy legislation, published in 2021. BSA is extremely familiar with the ULC model. We actively participated in the ULC's two-year process to develop privacy legislation and regularly submitted comments on the ULC's language as it evolved. Although we greatly appreciate the ULC's efforts, the ULC ultimately adopted a model of privacy legislation that we believe creates concerns for both consumers whose personal data would be subject to the legislation and for companies trying to implement it.

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

This letter highlights three of our most significant concerns with the ULC model, all of which are incorporated into LB1188.²

1. **Reduced consumer protections.** Although we appreciate the ULC thoughtfulness in addressing obligations for companies around the compatible, incompatible, and prohibited uses of personal data, we are concerned the ULC's approach does not meaningfully advance consumer protections in a manner that is likely to garner widespread support as an alternative to existing privacy frameworks. Indeed, it is not clear that this approach improves on consumer protections created by the rights and obligations consumers may know and expect from other state privacy laws, including those in California, Colorado, and Virginia.
2. **Reliance on voluntary consensus standards.** The ULC's reliance on voluntary consensus standards is also concerning and raises a host of practical difficulties for companies. At the outset, it is not clear that multiple states would adopt the same sets of voluntary consensus standards – reducing the incentive for parties to expend the effort required to create such standards in the first place. If they are developed, though, such standards may ultimately fragment the compliance landscape, particularly when different states adopt different standards that apply to the same set of activities. This fragmentation is especially concerning because the ULC's standards are based on a unique approach to privacy laws not reflected in existing global frameworks or international standards.
3. **Interoperability.** More broadly, the ULC model takes a fundamentally different approach to consumer privacy legislation than existing state privacy laws like the California Consumer Privacy Act (CCPA), the Virginia Consumer Data Protection Act (CDPA) and the Colorado Privacy Act (CPA). If Nebraska enacts the ULC model it would further fragment the landscape of privacy laws that provide consumers rights over their personal data and impose obligations on businesses that handle consumers' personal data. To be clear, we do not believe that states should copy-and-paste either the California, Virginia, or Colorado laws into their legislation. But privacy laws established 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 new obligations imposed by a particular law against their existing obligations under other laws.

Ultimately, we believe the ULC's model is not consistent with the ULC's express goal of promoting uniformity and bringing clarity and stability to critical areas of state statutory law. We urge Nebraska to take a different approach and instead consider consumer privacy legislation that is interoperable with privacy laws adopted by other states. For example, adopting a privacy law based on the Colorado and Virginia laws would better help consumers understand their rights and businesses understand their obligations; these laws also readily

² We expressed these and other concerns to the ULC's Drafting Committee throughout the ULC's drafting process, including in both formal and informal requests by the committee for feedback. For example, BSA's August 12, 2020 letter to the ULC and BSA's April 15, 2021 letter to the ULC highlight many of the concerns identified in this letter.

map onto leading global privacy laws, such as the European Union's General Data Protection Regulation (GDPR). Although we appreciate the importance of creatively examining the complex issues raised by any privacy law, we believe consumer privacy is better protected by such an approach than by adopting the ULC model.

In addition to the overarching concerns discussed above, we also have a range of specific concerns with provisions of the ULC model. For example, the ULC's approach to obligations for processors and controllers, its scope, and the method for enforcing the rights and obligations it creates all raise significant concerns. We would welcome the opportunity speak with you about these concerns in further detail.

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

Sincerely,

A handwritten signature in blue ink that reads "Tom Foulkes". The signature is written in a cursive, flowing style.

Tom Foulkes
Senior Director, State Advocacy