



March 6, 2024

The Honorable Robert Stivers
Senate President
207 Main St.
Manchester, KY 40962

Dear Senator Stivers:

BSA | The Software Alliance¹ supports strong privacy protections for consumers and appreciates your work to improve consumer privacy through House Bill 15 (HB 15). 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.

We appreciate the opportunity to share our feedback on HB 15. Our feedback below focuses on BSA's support for HB 15'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.

¹ 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. Distinguishing Between Controllers and Processors Benefits Consumers.

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. Indeed, all states with comprehensive consumer privacy laws recognize this critical distinction.² 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.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 appreciates the inclusion of this globally recognized distinction into HB 15.

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 HB 15'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.

² 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/010622ctrlprostatepriv.pdf>.

³ 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.

⁴ 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 helps companies that process data demonstrate adherence to privacy obligations and helps controllers identify qualified and accountable processors. In addition, the International Standards Organization in 2019 published its first data protection standard, ISO 27701, which recognizes the distinct roles of controllers and processors in handling personal data. For additional information on the longstanding distinction between controllers and processors — sometimes called businesses and service providers — BSA has published a summary available [here](#).

II. BSA Supports an Interoperable Approach to Privacy Legislation.

We also appreciate your efforts to craft privacy protections in HB 15 to be interoperable with existing state privacy laws. This approach promotes uniform and clear safeguards for consumers across state lines. In particular, we appreciate the harmonized approach taken in aligning HB 15's provisions with 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. 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 HB 15 for creating privacy protections that are interoperable with other state privacy laws, which helps drive strong business compliance practices that can better protect consumer privacy.

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