TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-SECOND LEGISLATURE, 2023

ON THE FOLLOWING MEASURE:
H.B. NO. 1497, RELATING TO CONSUMER DATA PROTECTION.

BEFORE THE:
HOUSE COMMITTEE ON HIGHER EDUCATION AND TECHNOLOGY

DATE: Wednesday, February 1, 2023 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 309

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Bryan C. Yee or Benjamin M. Creps, Deputy Attorneys General

Chair Perruso and Members of the Committee:

The Department of the Attorney General (Department) supports the intent of this bill and provides the following comments.

This bill establishes a new chapter to regulate certain “controllers” and “processors” that operate in the State or produce products or services targeted to consumers in the State. A controller is defined as a "person that . . . determines the purpose and means of processing personal data," and a processor is defined as a "person that processes personal data on behalf of a controller." The chapter will apply to controllers and processors that (1) have access to consumers' personal data and either (A) control or process personal data for more than 100,000 consumers in a year, or (B) control or process the personal data of at least 25,000 consumers and derive over fifty percent of gross revenue from the sale of personal data. Government entities, nonprofits, institutions of higher education, and certain financial institutions are excluded from the application of the chapter, as are the categories of data set forth by subsection -2(c).

The Department notes that section -2(a)(2) does not set a time frame in which to calculate the threshold number of consumers whose data a controller or processor controls or processes in order to trigger the application of the proposed chapter. *See* page 9, lines 12-14. If the intent was to set the same time frame as in section -2(a)(1) for -2(a)(2), during a calendar year, we recommend amending page 9, lines 9-10, to read as follows:

. . . or services that are targeted to residents of the State and[~~;~~] during a calendar year:

(1) [~~During a calendar year, control~~] Control or process personal . . . .

The Department supports the intent of this bill and the consumer protections established thereunder.

Thank you for the opportunity to present this testimony.

HAWAII INSURERS COUNCIL
A trade association of property and casualty insurance companies

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Honolulu, Hawaii 96813
Telephone (808) 525-5877

Alison H. Ueoka
President

TESTIMONY OF ALISON UEOKA

COMMITTEE ON HIGHER EDUCATION & TECHNOLOGY
Representative Amy A. Perruso, Chair
Representative Jeanne Kapela, Vice Chair

Wednesday, February 1, 2023
2:00 p.m.

HB 1497

Chair Perruso, Vice Chair Kapela, and members of the Committee on Higher Education & Technology, my name is Alison Ueoka, President for Hawaii Insurers Council. The Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately forty percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council submits comments and requests one amendment to this bill.

While Hawaii Insurers Council commends your Committee's effort to protect the personal information of consumers in Hawaii, we believe Section 2, subsection (b), of the bill should be expanded to exempt those insurers licensed under Chapters 431 and 432, Hawaii Revised Statutes, because the Data Security Model Law as proposed by the National Association of Insurance Commissioners (NAIC) was adopted in Hawaii in 2021 and is now codified as Article 3B, Chapter 431, Hawaii Revised Statutes. This NAIC model law was specifically drafted by the NAIC for the property and casualty insurance industry (and health insurers) to properly manage and secure personal information.

Thank you for the opportunity to testify.

TESTIMONY OF TINA YAMAKI, PRESIDENT
RETAIL MERCHANTS OF HAWAII
February 1, 2023
Re: HB 1497 RELATING TO CONSUMER DATA PROTECTION

Good afternoon, Chair Perruso, and members of the House Committee on High Education & Technology. am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii was founded in 1901 and is a statewide, not for profit trade organization committed to supporting the growth and development of the retail industry in Hawaii. Our membership includes small mom & pop stores, large box stores, resellers, luxury retail, department stores, shopping malls, on-line sellers, local, national, and international retailers, chains, and everyone in between.

We are opposed to this measure. This bill establishes a framework to regulate controllers and processors with access to personal consumer data. Establishes that a violation of the consumer data privacy act constitutes an unfair method of competition and unfair and deceptive acts or practices in the conduct of any trade of commerce. Authorizes a person injured by a violation of the personal consumer data act to bring a civil action against a controller or processor.

Congress is currently working federal legislation that addresses consumer date protection. We ask that the committee takes this into consideration and recommend that we wait for the federal legislation before moving forward. It is our understanding that the measure before congress is moving and addresses many concerns.

We respectfully ask that you hold this measure. Mahalo again for this opportunity to testify.

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TESTIMONY BEFORE THE HOUSE COMMITTEE ON HIGHER EDUCATION & TECHNOLOGY

HB 1497
Relating to Consumer Privacy

February 1, 2023
2:00 p.m., Agenda Item #5
State Capitol, Conference Room 309 & Videoconference

Wendee Hilderbrand
Managing Counsel & Privacy Officer
Hawaiian Electric

Chair Perruso, Vice Chair Kapela, and Members of the Committee:

My name is Wendee Hilderbrand, and I am testifying on behalf of Hawaiian Electric in opposition to HB 1497. Hawaiian Electric strongly supports consumer privacy rights. Our company has a robust privacy program that voluntarily employs most of the practices set forth in HB 1497. Hawaiian Electric's objection to HB 1497 is based on the immaturity of the legislation underlying the bill. Hawaiian Electric is concerned about unintended consequences to local businesses, including Hawaiian Electric, that may hurt the same consumers the legislation is designed to help.

Similar laws in California and Virginia took effect just a month ago, on January 1, 2023; companion laws in Colorado and Utah are not scheduled to take effect until later this year. In the meantime, each of these states has been struggling with the costs the legislation has imposed on local businesses,[1] the challenges of complying with four

[1] One state report estimated that the compliance efforts required by an earlier version of California's legislation (compliance requirements have become more onerous since) were likely to reach $55 billion. *See* State of Cal. DOJ Office of the Attorney General Report, "Standardized Regulatory Impact Assessment: California Consumer Privacy Act of 2018 Regulations," prepared by Berkley Economic Advising & Research, LLC (August 2019).

different statutory schemes, and the prospect that federal legislation may preempt all of the above efforts/troubles.[2]

The evolution of consumer privacy legislation on the mainland - just from 2018 to 2022 - makes clear that improvements are being made. Recent laws passed in Virginia, Colorado, and Utah have eased the impact and expense on the business community (*e.g.*, exempting employee records) without losing the crux of consumer privacy rights (*i.e.*, the right to know, to correct, and to delete/be forgotten). With legislation this impactful, which will require all businesses to change internal processes and incur substantial compliance costs, it seems prudent to wait until a few states have implemented and worked through some of the unintended consequences.

Should the Committee choose to move forward with HB 1497, Hawaiian Electric's primary objections include (i) the right to access; (ii) private right of action; (iii) 30-day cure period; and (4) effective date.

(i) The language "and **to access the personal data**" in § 3(1) should be deleted. Early versions of the legislation provided customers the right to receive copies of all their information. Businesses challenged this right, pointing out that there is a lot of internal company data to which consumers have no right (*e.g.*, internal file notes, intellectual property). Virginia (and then CO & UT) attempted to "fix" this issue by limiting a consumer's right to receive copies of data to only data that was originally provided to the business by the consumer. Unfortunately, though, these bills left an ambiguity in the language. Although the "right to copies" has been restricted (and is restricted in HB 1497), the language still grants a right "to access the [consumer's] personal data." Since the vast majority of data is electronic, in proprietary systems, the

[2] The federal legislature has been considering the American Data Privacy and Protection Act (ADPPA), which addresses the same issues and would preempt all state statutes.

only way to fully effectuate this right is, essentially, by providing the customer copies, implicating the same concerns that the Virginia and Colorado bills tried to fix. Hawaiian Electric proposes that the language "and to access the personal data" be deleted from § 3(1) in HB 1497.

(ii) The "**private right of action**" included in § 10(c) should be deleted. Out of the four states that have passed this legislation, three of four have left enforcement solely in the hands of their states' attorneys general. Perhaps recognizing that these obligations are new and that businesses, legislators, and the judicial system all need some time to figure out what is an 'unfair trade practice' under this legislation, other states have trusted their states' attorneys general and foreclosed the prospect of private lawsuits. Legislation proposed in Hawaii last session took the same approach, and it is unclear what changed. Hawaiian Electric supports an approach that relies upon the State Attorney General and opposes the inclusion of a private right of action.

(iii) Reinsertion of a "**30-day grace period**." Similarly, recent legislation in three of the four states that have passed consumer privacy legislation has included a 30-day notice and cure period, to assure local businesses that this novel legislation is not going to be used as a "gotcha" to unduly penalize existing practices. Legislation proposed in Hawaii last session took the same approach, and it is unclear what changed. Hawaiian Electric requests that the 30-day cure period be added back into the legislation.

(vi) Change the **effective date** from July 1, 2023, to January 1, 2026. Recognizing the challenge of preparing for compliance, other states have allowed roughly two years between passage and implementation. Hawaiian Electric respectfully requests a similar period, amending Section 2 to provide for an effective date no earlier than January 1, 2025.

Thank you for the opportunity to provide testimony.

STATE PRIVACY & SECURITY COALITION

January 31, 2023

Chair Amy A. Perruso
Vice Chair Jeanne Kapela
Committee on Higher Education & Technology
Hawaii House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

Re: Consumer Data Protection Act (HB 1497)

Dear Chair Perruso and Members of the Committee,

The State Privacy & Security Coalition (SPSC), a coalition of over 30 companies and five trade associations in the retail, telecom, technology, automobile, health care, and payment card sectors, writes with concern regarding HB 1497. While we appreciate and support advancing a bill that draws from the Virginia consumer privacy framework which three other states have passed, removing the Right to Cure will inhibit the speedy resolution of compliance issues, and the private right of action will incentivize trial lawyers to exploit good-faith errors, enriching themselves on the backs of consumers. There are additional issues that can be fixed as this bill moves forward, but at this point the focus should be on removing the private right of action and adding a right to cure.

Right to Cure

SPSC believes that the Right to Cure is a critically important tool that benefits the state enforcement authority, consumers, and businesses alike.

The Right to Cure benefits the state enforcement authority because it allows them to cast a wide net of enforcement without instituting an official investigation. Upon receiving a complaint from a consumer, or as a result of its own diligence, the authority can send a simple letter notifying the entity of its violation. The entity then must fix the violation ***and expressly promise not to commit any further such violations*** within a defined time period (other states have chosen between 30-60 days). The Right to Cure amplifies an Attorney General or other state enforcement authority's reach. Additionally, it also helps weed out the bad actors from the good actors. An entity that ignores a Right to Cure notice opens itself up to a full suite of penalties, and rightfully so; however, entities that experience, for instance, a technical glitch that inhibits an opt-out link's functionality, or a privacy policy that is missing a required clause, can be remedied and resolved.

The Right to Cure benefits consumers because it helps ensure a speedy resolution of complaints. If a business is not opting individuals out of sale or effectively deleting consumer information, they must do so within the defined period. This helps consumers far more than the

ability to institute litigation, which is not only a years-long process but comes with considerable costs. The Right to Cure is exponentially faster and cheaper to use as a resolution mechanism.

Lastly, the Right to Cure helps business entities by providing a reprieve from good faith errors. Lest there be any confusion or misunderstanding – it is literally impossible for a business to build a compliance program in the cure period; ***the Right to Cure is not a loophole to ignore compliance***. However, these types of laws are extremely complex and technical from an implementation standpoint; it would not be uncommon for minor errors to occur (for instance, a business omitting a consumer's email address when returning an access request) that are not material to the overall compliance picture. If the goal of a privacy statute is compliance and not punishment, the Right to Cure is an integral part of that system.

The Private Right of Action Will Not Benefit Consumers

Including a private right of action for technical or perceived violations of this statute would create massive class action litigation exposure for any *alleged* violations of the law by commercial entities. Notably, ***not a single state has chosen to implement a private right of action for comprehensive privacy law requirements.***

Where states have implemented private rights of action, like in the Illinois Biometrics Information Privacy Act, the result has been to enrich trial lawyers without striking a balance that allows the use of consumer data for beneficial, everyday purposes. The private right of action in HB 1497 would do the same. Put simply, a private right of action means businesses will be much less likely to offer services that keep the identities of Hawaii's residents safe.

This is because plaintiff trial lawyers' legal strategy to extract settlements does not rest on the merits of the case, but instead on the opportunity to inflict asymmetrical discovery costs on businesses both small and large – with a cost to defend these frivolous actions averaging $500,000. These heavy costs to defend cases through summary judgment gives trial lawyers, who bear no or minimal discovery costs, huge negotiating leverage for nuisance settlements, even if the defendant is compliant with the law.

Furthermore, studies have revealed that private rights of action fail to compensate consumers ***even when a violation has been shown***, and instead primarily benefit the plaintiff's bar by creating a "sue and settle" environment.[1] This is not to say that Hawaii lacks effective enforcement options outside the trial bar – to the contrary, it has a strong consumer protection statute that the Attorney General can use *right now* to punish bad actors. On the other hand, the private right of action in Illinois has not only failed to meaningfully protect consumers, but actually made them less safe, as anti-fraud, convenient authentication, and other beneficial services leave the state because of abusive litigation risk.

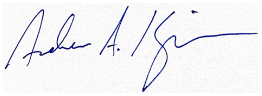
[1] Mark Brennan et al., Ill-Suited: Private Rights of Action and Privacy Claims, U.S. Chamber Institute for Legal Reform (July 2019).

* * *

HB 1497 builds off the framework adopted in three other states and with changes to the enforcement structure and several minor operational amendments, would strike the appropriate balance between increased consumer control and transparency over personal data, operational workability, and cybersecurity protections for the Hawaii residents. SPSC wants to ensure that that the focus is on compliance, not litigation defense, which can be achieved by clarifying that enforcement rests exclusively with the Attorney General.

We would be happy to answer any questions, and look forward to continued conversations.

Respectfully submitted,



Andrew A. Kingman
Counsel, State Privacy & Security Coalition

SanHi
GOVERNMENT STRATEGIES
A LIMITED LIABILITY LAW PARTNERSHIP

DATE: January 31, 2023

TO: Representative Amy A. Perusso
Chair, Committee on Higher Education & Technology
Submitted Via Capitol Website

FROM: Matt Tsujimura

RE: **H.B. 1497 – Relating to Consumer Data Protection**
Hearing Date: Tuesday, February 1, 2023 at 2:00PM
Conference Room: 309

Dear Chair Perusso, Vice Chair Kapela, and Members of the Committee on Higher Education & Technology:

I am Matt Tsujimura, representing State Farm Mutual Automobile Insurance Company (State Farm). State Farm offers this testimony **in opposition** to H.B. 1497 which establishes a framework to regulate controllers and processors with access to personal consumer data.

State Farm understands and shares the Legislature's concern for protecting privacy of information that consumers give to businesses to provide the products and services that consumers desire. The financial services industry, which includes insurers, is highly regulated. Insurer's use of information is regulated through a framework of privacy laws at the state and federal level, including the Gramm-Leach-Bliley Act (GLBA), HIPAA, and HRS §§ 431:2-209, 431:3A-101 to 431:3A-504, and 431:3B-101 to 431:3B-306.

The GLBA, for example, imposes strict privacy provisions to protect customers of financial services entities. The GLBA provides consumers with the right to opt out of sharing nonpublic personal information (NPI) with nonaffiliated third parties and requires financial institutions to provide customers with a privacy policy disclosing: 1) whether the financial institution discloses NPI to affiliates and nonaffiliated third parties, including the categories of information disclosed; 2) whether the financial institution discloses NPI of former customers; 3) the categories of NPI collected by the financial institution; 4) the policies maintained by the financial institution to protect the confidentiality and security of NPI; and 5) disclosure of and ability to opt out of sharing NPI with affiliates.

Under the GLBA, insurers **cannot** disclose NPI to nonaffiliated third parties without notice and an opportunity to opt out. Exceptions to this general rule—such as the "service provider" exception— account for the need to process transactions or to report consumer information to consumer reporting agencies. Under the GLBA, state insurance regulators are the functional regulators for privacy and security of customer personal information held by insurers. H.B.1497 appears to ignore the restrictions placed on insurers by the GLBA. By doing so, the bill may inadvertently create

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inconsistent requirements, increase the cost of compliance, and, most importantly, confuse consumers.

State Farm further opposes the provisions for a private right of action. Enforcement should be dedicated to a regulatory agency or the Attorney General who would be in a better position to interpret and apply the law consistently.

State Farm favors the enactment of a pre-emptive national data privacy law over the current patchwork of federal and state privacy requirements. While State Farm appreciates the need to protect consumers, the variation in privacy laws across the states presents operational challenges and create confusion for consumers.

For the reasons above, we respectfully oppose the measure. Thank you for the opportunity to submit testimony.

TECHNET
THE VOICE OF THE INNOVATION ECONOMY

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January 31, 2023

Representative Amy A. Perruso
Chair, Higher Education and Technology Committee
Hawaii State Capitol
415 South Beretania Street, Room 444
Honolulu, HI 96813

Representative Jeanne Kapela
Vice Chair, Higher Education and Technology Committee
Hawaii State Capitol
415 South Beretania Street, Room 418
Honolulu, HI 96813

Re: HB 1497 (Saiki) – Consumer Data Protection Act – OPPOSE

Dear Chair Perruso, Vice Chair Kapela and Members of the Committee,

TechNet must respectfully oppose HB 1497, a bill that attempts to protect consumer data but includes an unnecessary private right of action and omits a right to cure.

TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over five million employees and countless customers in the fields of information technology, e-commerce, the sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance.

Our member companies place a high priority on consumer privacy. The technology industry is fully committed to securing privacy and security for consumers and engages in a wide range of practices to provide consumers with notice, choices about how their data are used, and control over their data. TechNet supports a federal standard that establishes a uniform set of rights and responsibilities for all Americans. Even the most well-designed state statute will ultimately contribute to a patchwork of different standards across the country. Understanding that states will move forward in the

absence of federal law, we ask that the Committee ensure interoperability with existing models, remove the private right of action, and provide the right to cure.

TechNet strongly opposes the inclusion of a private right of action, which will encourage unnecessary litigation that could lead to negative, unintended consequences for Hawaii businesses of all sizes. A dispersed enforcement mechanism like a private right of action does not increase privacy protections to any consumers beyond the litigators. Every state that has passed a general consumer privacy act so far has opted to not include a private right of action, recognizing the complexity of privacy law and the potential for costly frivolous litigation.

In addition, TechNet believes that a right to cure provision is critical component of such a complex operational law. A right to cure helps to ensure compliance while enabling the state to focus its time and resources on malicious activity as opposed to unintentional violations. It would enable the state to broaden its enforcement capacity while bringing a timely resolution to complaints.

Thank you for your consideration. If you have any questions regarding TechNet's position on this bill, please contact Dylan Hoffman, Executive Director, at dhoffman@technet.org or 505-402-5738.

Sincerely,

Dylan Hoffman
Executive Director for California and the Southwest
TechNet

NAMIC
NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

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Hawaii State Legislature
House Committee on Consumer Protection

February 1, 2023

Submitted electronically

RE: **HB 1497, Consumers; Data Privacy; Attorney General; Appropriation - NAMIC's Written Testimony <u>in Opposition</u>**

Thank you for affording the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to the House Committee on Consumer Protection for the public hearing on HB 1497.

NAMIC is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies representing 40 percent of the total market. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC member companies serve more than 170 million policyholders and write nearly $225 billion in annual premiums.

Although NAMIC shares and appreciates the Legislature's public policy objective of protecting the privacy of information that consumers provide to businesses to facilitate the purchase of products and services desired by the consumers, we have a number of concerns with the proposed legislation.

First, we question the necessity of the proposed regulation. The financial services industry, which includes insurers, is highly regulated. Insurer's use of information is regulated through a well-established framework of privacy laws at the state and federal level, including the Gramm-Leach-Bliley Act (GLBA), HIPAA, and HRS §§ 431:2-209, 431:3A-101 to 431:3A-504, and 431:3B-101 to 431:3B-306.

Specifically, the GLBA imposes strict privacy provisions to protect customers of financial services entities. Insurers have been complying with these detailed and comprehensive requirements throughout the nation for many years, without any privacy protection problems for consumers. The GLBA provides consumers with the right to opt out of sharing nonpublic personal information (NPI) with nonaffiliated third parties and requires financial institutions to provide customers with a privacy policy discloser. Under the GLBA, the state insurance agency is the controlling regulator for privacy and security of customer personal information held by insurers. Insurance departments have extensive experience providing regulatory oversight of the insurance industry for the benefit of insurance consumers. The proposed regulation fails to take into consideration that the GLBA and state insurance regulators are already effectively addressing consumer privacy protection issues.

Second, NAMIC is concerned that the proposed regulation will establish inconsistent requirements with the GLBA; thereby, increasing the IT and administrative cost of regulatory compliance for insurers which is an insurance rate cost-driver for consumers, and creating unnecessary confuse for consumers as to what privacy protections are controlling. Consequently, NAMIC believes that consumer are best protected when there is a pre-emptive national data privacy law so that there isn't a patchwork of overlapping, redundant, and conflicting federal and state privacy requirements for consumers to have to figure out.

Third, NAMIC is opposed to the provision in the bill that would create a private right of action for civil litigation. There is no evidence to support the belief that state insurance regulators or state Attorney Generals are incapable of providing regulatory oversight and enforcement of privacy protection laws. These state agencies have extensive experience in interpreting, applying, and evaluating insurer compliance with complex privacy laws. Creating a private cause of action will not provide consumers with greater privacy protection, it will only result in the formation of a "cottage industry" of civil litigation specialists set on pursuing monetary settlements.

For the aforementioned reasons, NAMIC respectfully requests that the members of the House Committee on Consumer Protection **VOTE NO on HB 1497.**

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you would like to discuss NAMIC's written testimony.

Respectfully,

Christian John Rataj, Esq.
NAMIC Senior Regional Vice President
State Government Affairs, Western Region

Testimony of
JAKE LESTOCK
CTIA

In Opposition to House Bill 1497

Before the Hawaii House Committee on Higher Education & Technology

February 1, 2023

Chair Perruso, Vice-Chair, and members of the committee, on behalf of CTIA®, the trade association for the wireless communications industry, I submit this testimony in opposition to House Bill 1497. This bill would establish state regulations to address an inherently national and global issue: the protection of personal data. As currently drafted, CTIA opposes the bill, including the private right of action language, the lack of a right to cure that is found in other state privacy laws, and conferring rulemaking authority.

At the outset, we note that consumer privacy is an important issue and the stakes involved in consumer privacy legislation are high. State-by-state regulation of consumer privacy will create an unworkable patchwork that will also lead to consumer confusion. That is why CTIA strongly supports ongoing efforts within the federal government to develop a uniform national approach to consumer privacy. Taking the wrong approach could have serious consequences for consumers, innovation, and competition in Hawaii. Moving forward with a patchwork of state regulations would only complicate federal efforts while imposing serious compliance challenges on businesses and ultimately confusing consumers. Federal

legislation is the only way to ensure clear, consistent privacy protection for consumers and certainty for businesses. We appreciate that HB 1497 is largely aligned with the Virginia consumer privacy law, which was implemented this year. Nevertheless, this bill would significantly deviate from the Virginia law in three critical respects.

First, by creating a private right of action for comprehensive privacy requirements, which no other state has done. A private right of action in privacy legislation would subject companies, both large and small, to the risk of expensive litigation that primarily benefits the plaintiffs' bar and offers little relief to consumers. Enforcement agencies such as the state attorneys general should shape statewide policy with a more holistic and experienced approach. Agencies can be expected to better understand the complexities of the law and to balance the various factors of encouraging compliance, supporting innovation, and preventing and remediating harm.

Second, HB 1497 does not include a provision for a right to cure, which is found in the Virginia, Connecticut, Colorado, and Utah data privacy frameworks. This is a significant tool that allows a state enforcement authority to seek speedy resolution to good faith compliance issues, and to focus their resources for enforcement actions on those businesses that either will not or cannot come into compliance within the statutory cure period. The right to cure works as follows: the state enforcement authority sends notice of an alleged violation, which the business must both fix within a statutorily set period and make an express commitment to not commit that violation in the future. If the business ignores the notice and opportunity to

cure, the state enforcement authority is fully empowered to bring an action to seek remedies like an injunction and civil penalties. This ensures that good faith actors with technical compliance issues, which can happen under technically complex frameworks for data privacy, are given an opportunity to quickly remedy the issue, while ensuring the state enforcement authority can proceed.

Lastly, HB 1497 would confer broad rulemaking authority, which results in compliance ambiguity. In states that have granted rulemaking authority, the processes have been complex, sometimes delayed, and resulted in significant compliance uncertainty. For example, in California, the recently amended statute called for implementing regulations that were statutorily required to be completed by July 1, 2022 to allow for a one-year compliance period. But these voluminous regulations have yet to finalize, and the current proposed regulations do not address all of the issues mandated by statute. This added complexity is unnecessary with HB 1497 which is already aligned with the clear statutory standard found in the Virginia law.

In closing, we reiterate our concern about the enactment of state laws that create further fragmentation at the state level. For these reasons, CTIA respectfully opposes HB 1497. Thank you for your consideration.