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**House Bill 2202 - An Act providing for consumer data privacy, for rights of consumers and duties of businesses relating to the collection of personal information and for duties of the Attorney General –
Opposed unless amended**

Dear Chairman Marshall and members of the House Consumer Affairs committee,

On behalf of the Consumer Data Industry Association (“CDIA”) we would like to offer comments on House Bill 2202 - An Act providing for consumer data privacy, for rights of consumers and duties of businesses relating to the collection of personal information and for duties of the Attorney General.

The Consumer Data Industry Association is the voice of the consumer reporting industry, representing consumer reporting agencies including the nationwide credit bureaus, regional and specialized credit bureaus, background check and residential screening companies, and others. Founded in 1906, CDIA promotes the responsible use of consumer data to help consumers achieve their financial goals, and to help businesses, governments and volunteer organizations avoid fraud and manage risk. Through data and analytics, CDIA members empower economic opportunity all over the world, helping ensure fair and safe transactions for consumers, facilitating competition and expanding consumers’ access to financial and other products suited to their unique needs.

House Bill 2202 would require larger companies and personal information aggregators to share information with consumers about what data of theirs is gathered, tracked, or sold. The bill also creates the right for a consumer to opt-out and have information deleted. The bill also establishes penalties and rulemaking authority from the Attorney General.

CDIA members are already very heavily regulated at the federal level by several well-established laws. Most notably the Fair Credit Reporting Act (FCRA) and Gramm-Leach-Bliley Act (GLBA). Passed in 1970, the FCRA is the country’s first national privacy law. The law has been amended many times over the years to ensure consumer protections are properly maintained as technology and use of consumer data has evolved. The FCRA has long held robust consumer protections including the right:

- To know what information is collected about consumers,
- To know who has accessed consumer information,
- To know if information included in a consumer report results in an adverse action, and
- To correct and delete inaccurate information on a consumer’s file.

The FCRA provides for strictly controlled permissible purposes to limit access to consumer reports by data users. The FCRA also affords substantial identity theft prevention and mitigation rights for consumers and duties for businesses. For enforcement purposes, the FCRA provides for private rights of action, and enforcement by state attorneys general, the Consumer Financial Protection Bureau (CFPB), and the Federal Trade Commission (FTC).

It is critically important for a state privacy law to recognize consumer protections that currently exist under federal privacy law. Any state privacy law should include clear and concise language exempting consumer data already regulated under the federal Fair Credit Reporting Act (FCRA). The FCRA provides important and necessary protections to consumers, lenders, government agencies, law enforcement, volunteer organizations, and businesses who rely on full, complete and accurate consumer reports to meet

their needs and expectations and make informed decisions. An incomplete FCRA exemption risks negatively impacting the integrity of the consumer reporting ecosystem, and therefore the safety and soundness of the economy.

The Gramm-Leach-Bliley Act (GLBA) is, in significant part, a national financial privacy law. The law imposes requirements on businesses to limit the disclosure of information and allows consumers to opt-out of certain information sharing.

House Bill 2202 does not include clear and complete exemptions for public records and fraud prevention. There is a long-valued tradition in the United States of making public records available to the general public. The benefits of public record access and use are well-established to, among other things, combat fraud in both the public and private sectors and to more easily complete consumer transactions to meet consumer expectations.

Fraud in the public and private sectors may be hard to quantify but cannot be understated. Preventing fraud in for governments and businesses is an ongoing struggle. It is imperative that the private sector have robust access to a wide array of information to help businesses and governments alike prevent fraud.

House Bill 2202 does not include a clear and complete exemption for employee information. Credit reporting agencies help employers make hiring and promotion decisions and allow citizens in need to obtain social services and other government aid. If these types of disclosures were discouraged or subject to consumer requests for deletion, then significant, unintended harms are likely to result.

As states consider new consumer privacy protection legislation, it is important they understand the critical importance of ensuring these processes are not in conflict with state law. Crucially, state legislation should include its own employment information exemption because some state consumer reporting laws are focused on traditional credit reporting only. The employment information exemption language helps to ensure that there is no confusion about whether a credit reporting exemption covers employment-related consumer report data.

House Bill 2202 also lacks clear third-party data notice requirements for a business without a direct consumer relationship. Occasionally, state privacy legislation introduces notice requirements that are often unworkable and do not provide a benefit to the consumer. This legislation will implicitly impose a notice requirement on a business even though the business does not have a customer relationship or other direct relationship with the consumer.

Notice requirements that implicitly include businesses without a direct consumer relationship can be fixed to meet consumer needs for fast, reliable transactions. The fix proposed keeps intact the ultimate policy goal of ensuring consumers receive explicit notice at the time of collection and the ability to opt-out.

The best solution to meet consumer needs is to apply notice requirements to businesses that collect information "from consumers" and [to limit the prohibitions on information collection to businesses that collect or use information "from consumers]." Addressing this issue on the collection side and the prohibition side makes clear that providing notice at the time of collection is only possible when the information is being collected from the consumer. Additionally, a consumer who receives such notifications and has not opted out of the sale of their information would understand that third parties would potentially receive information about them.

CDIA members are regulated by other federal laws in addition to the heavy regulation in place under the FCRA and GLBA. There is precedent for all of the exemptions mentioned in data privacy legislation passed in other states as well. For the reasons mentioned above CDIA opposes House Bill 22022 as currently drafted and respectfully requests several amendments to the bill. We have model language for these amendments and have shared them.

Thank you for the consideration of our comments and I would be happy to answer any questions you may have.

Sincerely,

Mike Carone

Mike Carone
Manager of Government Relations
Consumer Data Industry Association (CDIA)