



ATTORNEY GENERAL WILLIAM TONG  
STATE OF CONNECTICUT

**Senate Bill 893: *An Act Concerning Consumer Privacy***

Chairman D'Agostino, Ranking Member Rutigliano, Chairman Maroney, Ranking Member Witkos and distinguished members of the General Law Committee, thank you for the opportunity to testify before you today on SB 893, *An Act Concerning Consumer Privacy*.

The Office of the Attorney General strongly supports the General Assembly addressing this issue, however the bill as drafted raises some concerns for us from an enforcement standpoint. Additionally, there are substantive changes we would request to be considered by the Committee. We strongly believe that we are the proper enforcement authority here, so we want to make sure that the bill language reflects our statutory enforcement structure and that it gives us the best tools and resources to be fair and thorough in this important work. The following comments are designed to highlight areas where we believe improvements can and should be made.

**Investigative and Enforcement Authority**

As currently drafted, SB 893 vests both enforcement and investigative authority with the Office of the Attorney General. As noted above, we agree that we are the proper state entity to conduct this work. With respect to our ability to investigate, however, we would point out that this authority typically stems from the Civil Investigative Demand (CID) authority that rests with the Commissioner of the Department of Consumer Protection under the Connecticut Unfair Trade Practices Act (CUTPA). This authority provides us the ability to investigate violations without first having to file a lawsuit. We enjoy a collaborative relationship with the Commissioner and regularly “borrow” this statutory power to conduct our investigations, but would urge that this distinction be accounted for within the bill’s language. Additionally, we would ask that any CID authority added here include the ability to issue CIDs not just to controllers and processors, but to other vendors and maintainers of data.

Further, in order to ensure we can meaningfully enforce the law, we strongly suggest that it contain a *per se* violation of CUTPA. As currently drafted, statutory damages are not to exceed \$7500 per violation. The use of statutory damages does not permit us to employ the degree of enforcement discretion currently afforded to us under CUTPA. By incorporating the existing CUTPA penalty structure into this bill, we would have access to a wider array of options, including evaluating an entity’s “ability to pay” in determining appropriate penalties to seek, and in appropriate circumstances, to seek injunctive relief.

By incorporating both the investigative methods and relief afforded under CUTPA, this bill would be consistent with our proposed updates to our Data Breach Notice Statute.

**Right to Cure**

SB 893 includes a 30-day period for business to cure an alleged violation before the Office of the Attorney General can bring an action to enforce such violation. Under a provision like this,



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businesses would only be considered in violation of the consumer rights provisions, transparency obligations, and required privacy risk assessments if they failed to cure the alleged violation within thirty (30) days of receiving notice of suspected noncompliance. This is an unwarranted and unnecessary “grace period” which would fundamentally alter and restrict the authority of our office and dilute our ability to protect Connecticut residents. We are also concerned that it would incentivize businesses not to comply until a notice has been provided. Further, the cure provision does not account for prior notices, which could mean deficiencies may be repeated.

### **Sweeping Carveouts & Exemptions and Limited Applicability**

SB 893 has a number of sweeping exemptions that could dilute the effect of the law. Some of these exemptions are similar to those in the California Consumer Privacy Act (CCPA) and the California Privacy Rights Act (CPRA), but overall, the exemptions included here are broader than those in the other two laws. For example, the bill not only exempts financial information or data that is subject to the Gramm-Leach-Bliley Act (GLBA) and protected health information under the Health Insurance Portability and Accountability Act (HIPAA), but also information regulated by the Family Educational Rights and Privacy Act, the Fair Credit Reporting Act, and the Children’s Online Privacy Protection Act (COPPA). SB 893 goes even further in its creation of entity-level exemptions, including any “financial institutions... subject to [the GLBA]” or to any “covered entity or business associate governed by [HIPAA].” Notably, GLBA and HIPAA subject entities are not afforded blanket exemptions under other analogous state laws or proposals, (e.g. in California, Washington, and New York) and we would not recommend providing such a broad exemption here. Rather, the exemption should be specific to the information regulated by those laws, not the entities as a whole.

With respect to threshold requirements, SB 893 applies to “persons that conduct business in [Connecticut] or that produce products or services that are targeted to residents of [Connecticut] and that: 1) during a calendar year, control or process personal data of at least 100,000 Connecticut residents or 2) control or process personal data of at least 25,000 Connecticut residents and derive over 50 percent of gross revenue from the sale of personal data.” We have concerns about whether these thresholds are too high and would urge the Committee to consider lower thresholds.

### **Actual Knowledge**

SB 893 would absolve a company from liability for sharing data with a third party if it does not have “actual knowledge” that the third party intended to violate the law at the time of contracting. This standard creates an enforcement hurdle for us in the form of onerous and inconsistent standards— actual knowledge is not a requirement for liability under CUTPA, and intent to commit a violation makes the actual knowledge barrier even more challenging. We would recommend removal of this subsection, 9(d), in its entirety.



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**“Sale” of Data**

Certain consumer protections in the bill are grounded in the “sale” of data, which is defined as the “exchange of personal data for monetary consideration.” Dated conceptions of “selling” information do not reflect how current data models work. Some have called for legislators to consider focusing on third party processing of data, rather than the “sale” of such data to third parties. This a foundational issue that we urge to the Committee to consider further.

**Opt-out Model**

While an opt-in model would afford consumers the greatest level of protection and autonomy, the opt-out model contained within this bill places the burden on the consumer rather than the controller. In addition, we are concerned that, under the current language of the bill, controllers are not required to pass on consumer rights requests to all third parties with whom they have shared personal data. This would effectively prevent consumers from opting out of downstream selling of their data and would dilute the effect of the law.

**Enforcement and Consumer Education Resources**

Finally, we think it is important to flag the resources that will be needed from our office in order to carry out our duties as contemplated by this bill. If consumers can appeal denials of data rights to the Attorney General, this will undoubtedly create a significant increase in the volume of complaints to our office. Further, should the cure provision remain in the bill, this will result in a further strain on resources, in addition to the investigations and enforcement actions we may bring. We also anticipate there being a need, and true value, to doing consumer education on the consumer rights contained herein, should this pass.

Once again, we appreciate the opportunity to appear before you today to discuss this important and emerging area of law. We believe that protecting consumer data privacy rights is a responsibility that we can, and should take on, and it is our hope that we can do so in the most thoughtful way possible. We look forward to working with the Committee as this progresses, and please do not hesitate to contact our office with any questions or concerns.