



February 21, 2024

The Honorable Zack Stephenson, Chair
The Honorable Carlie Kotyza-Witthuhn, Vice Chair
House Committee on Commerce Finance and Policy
Minnesota House of Representatives
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

RE: HF 2309, the Minnesota Consumer Data Privacy Act

Dear Chair Stephenson, Vice Chair Kotyza-Witthuhn, and Members of the Commerce Finance and Policy Committee:

On behalf of the Securities Industry and Financial Markets Association,¹ we thank you for the opportunity to provide comments on HF 2309, which would enact the Minnesota Consumer Data Privacy Act. SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers located throughout Minnesota and across the country. There are more than 151,000 people employed by the financial services industry in Minnesota, including more than 22,000 of employees in the securities industry.² SIFMA's mission is to support a strong financial services industry, investor opportunity, capital formation, job creation, and economic growth.

SIFMA commends the Committee for its dedication to protecting the privacy of Minnesota residents. Financial services firms remain committed to adhering to effective privacy laws and regulations. This proposal provides a good foundation for consumer protections but does not effectively harmonize with existing federal privacy laws applicable to the financial services industry. As drafted, this bill would create unnecessary, overlapping, and problematic requirements that could negatively impact both securities firms and Minnesota residents. For this reason, SIFMA respectfully requests that entities and their affiliates covered by the Gramm-Leach-Bliley Act be removed from the scope of this proposal.

The Gramm-Leach-Bliley Act exemption should include GLBA-covered entities, in addition to data collected, processed, sold, or disclosed pursuant to the GLBA.

Currently, HF 2309 includes a limited exemption for data collected, processed, sold, or disclosed pursuant to the GLBA. The GLBA, originally enacted in 1999, established a comprehensive federal law that governs financial institutions' privacy and data protection controls, including the disclosure of privacy practices to customers, cybersecurity controls, and restrictions on the unauthorized sharing of nonpublic personal information. This law comes with significant oversight and enforcement by financial regulators. In fact, the Securities and Exchange Commission adopted Regulation S-P – which sets securities industry-specific privacy requirements – just one year later.

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. For more information, visit <http://www.sifma.org>.

² US Department of Labor - Bureau of Economic Analysis (2022)

Financial services firms covered by the GLBA and Regulation S-P already have comprehensive, mature, and effective privacy programs in place. HF 2309 could disrupt those programs and negatively impact both Minnesota residents and businesses. In fact, the potential confusion that HF 2309 could create may potentially put residents at increased risk from bad actors.

Such confusion would largely stem from the fact that the GLBA explicitly applies to covered entities. As such, covered financial services firms generally treat all customer data the same way, regardless of how or why it was collected. This means that, functionally, all data collected or processed by GLBA-covered financial services firms receive GLBA protections. However, while most data processed by GLBA-covered entities would likely be considered “collected, processed, sold, or disclosed” pursuant to the GLBA, that is not necessarily clear for all data. HF 2309 would require differentiation of this data, which could lead to harmful unintended outcomes. For instance, the GLBA contains important provisions related to the prevention of fraud – provisions that align with Minnesota’s nation-leading senior investor protection program – which HF 2309 could disrupt.

Moreover, requiring the information to be dissected into categories – each governed by different laws – would impose a significant compliance burden on financial services firms and increase customer confusion. Even consumers that request the deletion of or changes to data determined to be outside the GLBA may still have their request denied because that data is subject to other federal laws or regulations (e.g., retention periods established by securities regulators), while also possibly losing GLBA protections. Consumers are unlikely to know or care which data is collected, processed, sold, or disclosed pursuant to the GLBA, yet they know when they are dealing with their bank, brokerage firm, or investment adviser and providing a uniform standard of care across all of a firm’s data is critical to positive outcomes.

While SIFMA understands there may be important reasons to maintain a data-specific GLBA exemption, for the reasons above we urge you to consider adding an exemption for GLBA-covered entities and their affiliates.

An entity-level exemption would also increase harmony with other state privacy laws.

In total, 13 states have enacted comprehensive consumer data privacy laws aimed at providing consumers with additional rights over their personal information. Colorado, Connecticut, Delaware, Florida, Indiana, Iowa, Montana, Tennessee, Texas, Utah and Virginia have all exempted entities subject to the GLBA, while California (the first state to enact such a law) and its neighbor Oregon only have a limited, data-specific exemption.

Thank you in advance for your time and consideration. Effective data privacy protections are more important than ever before, and we would like to work with your committee and the sponsor to better align the proposal with longstanding federal law and consumer protections. We appreciate your willingness to consider our concerns. If you have any questions, please contact me at (212) 313-1233 or kinnes@sifma.org.

Sincerely,

/s/

Kyle R. Innes

Managing Director and Associate General Counsel

SIFMA

CC: The Honorable Steve Elkins