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## COALITION FOR SENSIBLE PUBLIC RECORDS ACCESS

Date: April 21, 2021

To: Representative Terry Canales, Chairman, House Transportation Committee

Re: **SB 15—Need for a Different Approach**

### **Who We Are**

The Coalition for Sensible Public Records Access (CSPRA) is a non-profit organization dedicated to promoting the principle of open public record access to ensure individuals, the press, advocates, and businesses the continued freedom to collect and use the information made available in the public record for personal, governmental, commercial, and societal benefit. Members of CSPRA are just a few of the many entities that comprise a vital link in the flow of information for these purposes and provide services that are widely used by constituents in your state. Collectively, CSPRA members alone employ over 40,000 persons across the U.S. and over 5,000 of those are in Texas. The economic and societal activity that relies on entities such as CSPRA members is valued in the trillions of dollars. Our economy and society depend on value-added information and services that includes public record data for many important aspects of our daily lives and work and we work to protect those sensible uses of public records.

### **Public Records Help Improve Public Safety and Transportation Management**

A combination motor vehicle and driver records are accessed by authorized users to create substantial benefits for many individuals and businesses in Texas. Authorized users and their customers need this data to address such issues as:

- Automobile recalls and safety notices
- Keeping unsafe drivers off the road and out of high-risk driving roles
- Consumer protection and used car records validation for buyers
- Identity verification to help prevent identity fraud, money laundering, theft, and other crimes
- Law enforcement and anti-terrorism efforts
- Automotive industry supply chain, parts, and repair management
- Automotive manufacturing capacity, supply, and inventory management
- Future vehicle replacement needs, quality ratings of existing vehicles, and desired features in new vehicles
- Fleet management
- Fair and accurate insurance rate setting and underwriting
- Auto loan approvals and underwriting
- Child support enforcement
- Toll and tax collection

- And many other vital services

## **Federal Driver's Privacy Protection Act (DPPA) and Texas Motor Vehicle Records Disclosure Act Have Helped Balance Privacy and Access for 27 years**

The DPPA was passed in 1994 with broad support. Texas followed suit with its own conforming statute soon thereafter. Here is how the Texas Department of Motor Vehicles explains current Texas Law:

“Federal law prohibits the TxDMV from disclosing or confirming any of your personal information to the general public. This law, the [Driver's Privacy Protection Act \(DPPA\)](#), makes it illegal for the general public, including the media, to obtain, publish or confirm personal information about you from the state motor vehicle database. The law does provide exceptions for certain entities, such as courts and police.

Texas law provides additional protection under the [Motor Vehicle Records Disclosure Act](#), and the [Public Information Act](#) (Section 552.130).

However, be aware that other businesses may collect and sell information on you and your vehicle. Generally, these are motor vehicle-related businesses that capture information in their computer systems. These businesses are not covered under the federal and state privacy protection laws.” See <https://www.txdmv.gov/drivers-privacy-protection-act> .

Records are purchased at the cost of copying, electronic duplication, and delivery. There is a list of authorized users and uses in current law which are used to realize the benefits listed above. This is accomplished in large measure by private businesses accessing motor vehicle and driver records from multiple states and private sources, organizing, normalizing and securing the data, and adding value to the data to meet the needs of other businesses that buy these services. It is this sale of services, that depend in part on Texas public records, that delivers these valuable services and benefits to Texans.

There is a list of authorized users and uses in Federal and Texas law that was the result of years of debate and work to balance the needs and uses for the records and the concerns for privacy of the subjects of the records. It is from this base of existing federal and state law we believe Texas should work to address any bad actors who are misusing the data, inadequately protecting it, or using it for uses that should not be allowed.

### **SB 15 Needs a Simpler Approach to Drivers' Privacy Protection**

SB 15's development took the approach of deleting all authorized uses and users and inserting back in those that made a successful case for inclusion. The resulting bill still leaves out many needed uses and users. It has rewritten some sections in ways that are subject to a variety of new interpretations and unintended consequences. This is likely to result in years of revisions to the list. It prevents Texas businesses from buying the services they need to deliver the benefits we have listed above. The bill bans these value-added services as a prohibited resale of driver and vehicle data. We are in support of the Consumer Data Industry Association (CDIA) proposal to

address these remaining issues by amending SB 15. If amending this bill to continue to fix and address a new laundry list of authorized users and uses is the approach chosen, we certainly support improving the existing bill. However, we would like to suggest a simpler alternative that goes after bad actors, targets misuse of the data, and preserves the beneficial uses.

We suggest keeping the existing law for users and uses as is and instead doing the following to improve the law (see attached for more specific language):

- Increase the requirements for access to the data as we proposed in the Senate that were included in SB 15 with minor corrections (see attached). This addresses the problem of fly-by-night and irresponsible users getting access without accountability.
- Keep the requirement for increased transparency with the requirement for all users to be identified. This keeps the public informed on how their records are being used.
- Keep the requirement that those accessing the records employ adequate cyber security measures and provide notice of any breach. This helps protect the records in private hands and increases the requirements for those who have not deployed adequate cyber security protections.
- Keep the enhanced penalties in the bill for violating this law. This helps deter the bad actors.
- Keep the requirement that any services purchased that includes Texas records be only to authorized users for authorized uses. This addresses the responsibility of the private sector records managers to honor their contract and legal obligations.
- Keep the prohibition on use of the records for those annoying extended car warranty calls (please note that those calls use non-public records sources of data and are typically in violation of telemarketing laws, so more is needed to stop those calls than just reiterating that public records cannot be used).
- Keep in our suggestion for “salting” the data to detect misuse and unauthorized users of the data. This addresses the need for detecting and stopping illegal downstream uses after the initial entity gets copies of the data.
- Keep our suggestion for designating a person in each distributing agency to be responsible for enforcement of the requirements in contracts and the law. We also suggest that some additional enforcement resources be considered to help this person enforce the law. This addresses the problems that stem from inadequate enforcement of existing law, contracts, and the new provisions for enhanced protection and transparency.
- The proposed House amendment language that clarifies that Texas government agencies will still have access to these records for lawful governmental purposes includes a provision that also allows their “agents” to have access for the same purposes if working for the government. There are several ways that private entities use public and private data to support government administration, investigation, and enforcement of many laws—not all of which are accomplished under an “agency” arrangement. *We suggest a definition of agent that adds vendors, parties, and subcontractors who carry out lawful activities for or at the behest of a Texas government entity.*
- Finally, we would support additional prohibited uses beyond extended warranty calls if there is evidence of that use causing harm.

## **Protect Beneficial Uses of Public Records**

Use of public records in transportation is an essential societal function that needs to be protected. We think that a better policy for these vital public records is to improve on the long-standing statutes that already balance privacy and access by reducing bad and irresponsible actors' access to records, punishing bad actors, increasing enforcement, and stopping specific harmful uses. This approach avoids picking winners and losers in the market. Please help preserve the benefits that flow from public records access and use.

Thank you for your consideration of our input.

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