

Adoption Preamble

1
2 The Texas Department of Motor Vehicles (department) adopts new
3 sections to Chapter 217, Vehicle Titles and Registration,
4 Subchapter F, Motor Vehicle Record Information, §217.129,
5 Ineligibility to Receive Motor Vehicle Records, and §217.130,
6 Approval for Persons Whose Access to Motor Vehicle Records Has
7 Previously Been Terminated without changes to the proposed text
8 as published in the March 16, 2018, issue of the *Texas Register*
9 (43 TexReg 1621). These rules will not be republished. The
10 department also adopts amendments to §217.122, Definitions, and
11 §217.123, Access to Motor Vehicle Records, and new sections
12 §217.125, Additional Documentation Related to Certain Permitted
13 Uses, §217.126, Limitations on Resale and Redisclosure,
14 §217.127, Records Maintained by Recipients Who Resell or
15 Redisclose Personal Information, §217.128, Department Review of
16 Recipient's Records of Resale or Redisclosure with changes.
17 These rules will be republished.

18
19 While the recordkeeping provisions of Transportation Code
20 Chapter 730 have been in place since its enactment, the
21 enforcement of these rules will not take place until December
22 31, 2018.

23
24 Changes in the adopted amendments respond to public comments or
25 otherwise reflect nonsubstantive variations from the proposed
26 amendments to improve clarity and consistency. The changes do

1 not affect new persons, entities, or subjects other than those
2 given notice under the original proposal. Compliance with the
3 adopted sections will be less burdensome than under the proposed
4 sections.

5

6 EXPLANATION OF AMENDMENTS

7 Transportation Code, §730.014 allows any agency that compiles or
8 maintains motor vehicle records to adopt rules to implement and
9 administer the Motor Vehicle Records Disclosure Act.

10

11 The amendments to §217.122 differentiate those who request and
12 receive personal information contained in motor vehicle records
13 directly from the Department with those who receive records by
14 resale or redisclosure.

15

16 The amendments to §217.123 allow the department to accept
17 identification not enumerated but deemed acceptable when
18 processing a request for motor vehicle records.

19

20 EXPLANATION OF NEW SECTIONS

21 New §217.125 states what additional documentation is needed when
22 submitting a request for motor vehicle records to the
23 department. Where applicable, professionals licensed out-of-
24 state may be allowed to obtain motor vehicle records on a
25 record-by-record basis.

26

1 New §217.126 limits the forms personal information contained in
2 motor vehicle records may be resold or redisclosed and requires
3 anyone reselling or redisclosing personal information to inform
4 the recipient of their obligations under the Transportation
5 Code.

6
7 New §217.127 states what records must be maintained by those who
8 resell or redisclose personal information contained in motor
9 vehicle records.

10
11 New §217.128 states the department's process in reviewing
12 records kept by those who resell or redisclose personal
13 information contained in motor vehicle records.

14
15 New §217.129 states when a requestor of motor vehicle records is
16 ineligible to receive those records.

17
18 New §217.130 states how a requestor of motor vehicle records,
19 whose access was previously revoked, may regain access to
20 records.

21
22 COMMENTS AND RESPONSES

23 The department received comments from the following regarding
24 the proposed rules: Steve Hayden, HDR; HS Hardy, QuickView
25 Technologies (Quickview); Sean Wheatley, Experian Information
26 Solutions, Inc. (Experian); Alice Miles, R.L. Polk & Co. (POLK);

1 and Eric Ellman, Consumer Data Industry Association.

2

3 COMMENT

4 Polk and Experian requested the department clarify §217.122 to
5 reduce the proposed definitions from three proposed to two - one
6 for those who request and receive motor vehicle records from the
7 department, and one for every other person or entity who
8 qualifies for motor vehicle records under Transportation Code,
9 Chapter 730.

10

11 RESPONSE

12 The department agrees with the comments and has adjusted the
13 definitions to differentiate between those who approach the
14 department for motor vehicle records and those who may receive
15 motor vehicle records under Transportation Code, Chapter 730.

16

17 COMMENT

18 QuickView commented adding "personal information" to the
19 definition of motor vehicle record in §217.122 has the result of
20 limiting non-personal information from disclosure.

21

22 RESPONSE

23 The department agrees with this comment and believes removing
24 this provision better aligns with the statute, which
25 differentiates how motor vehicles records with and without
26 personal information may be resold or redisclosed.

1

2 COMMENT

3 Polk and Experian asked the department to clarify that the
4 provisions of §217.123(a) and (b) do not apply to those seeking
5 electronic access to records.

6 RESPONSE

7 ~~The department does not believe this language needs to be~~
8 ~~modified.~~ Currently, customers under a service agreement in
9 subsection (c) with the department for electronic access to
10 motor vehicle records are vetted in accordance with that
11 agreement. ~~Additionally, the provisions of §217.123(a) and~~
12 ~~Transportation Code, Chapter 730 are covered in the agreement.~~In
13 entering into that service agreement with the department,
14 customers complied with the provisions in §217.123(a) and (b).
15 Following compliance with those two provisions, customers under
16 a service agreement are only subject to §217.123(c) and that
17 agreement.

18

19 No change is necessary.

20

21 COMMENT

22 HDR, Experian, and Polk asked the department to clarify how the
23 additional documentation provisions of §217.125 apply to those
24 who resell or redisclose department data.

25

26 RESPONSE

1 No change is necessary here, as §217.125 applies only to the
2 department. This rule indicates the documentation the department
3 will require in order to disclose personal information
4 associated with a motor vehicle record. As mentioned, customers
5 under a service agreement with the department are bound by the
6 terms of that agreement and are not subject to the provisions in
7 §217.125. The permitted uses of our service agreement customers
8 are vetted according to that agreement and are continuously
9 monitored by the recordkeeping provisions associated with
10 Transportation Code Chapter 730.

11

12 COMMENT

13 QuickView asked the department to consider accepting out-of-
14 state licenses for the additional documentation in §217.125,
15 related to those who request personal information as insurance
16 agents, tow truck operators, or private investigators.

17

18 RESPONSE

19 The department agrees with this comment and will accept out-of-
20 state licenses as documentation required to prove a permitted
21 use. The statute itself does not expressly limit disclosure to
22 licensed professionals in Texas. However, under the department's
23 authority to limit unlawful disclosure, these requests may only
24 be submitted on a record-by-record basis.

25

26 COMMENT

1 Experian and Polk asked the department to modify §217.126 to
2 reflect the recordkeeping provisions of §217.127 only apply to
3 the resale and redisclosure of personal information.

4

5 RESPONSE

6 The department agrees that this modification is consistent with
7 the Transportation Code and will require recordkeeping only on
8 resold or redisclosed personal information.

9

10 COMMENT

11 Experian and Polk have asked the department to modify or delete
12 recordkeeping provisions regarding the quantity of records
13 disclosed due to the technical means by which the two consume
14 and resell data.

15

16 RESPONSE

17 The department understands our customer's usage of data varies
18 from person to person, and certainly reflected in those
19 differences are varying technological abilities as well. This
20 provision was not meant to grant the department control over our
21 customers' data systems. Rather, this provision will be used to
22 ensure that our customers are maintaining records and making
23 them available to the department as required under 18 U.S.C.
24 2721 and Transportation Code Chapter 730. Lastly, when the
25 department does ask our customers for records regarding resold
26 or redisclosed personal information, this provision is satisfied

1 by simply turning over those records to the department.

2

3 COMMENT

4 Experian and Polk asked the department to require language in
5 resellers' contracts alerting their customers of the obligations
6 of the Transportation Code. Additionally, the two asked the
7 department to delete language holding resellers responsible for
8 the misuse of data by downstream users.

9

10 RESPONSE

11 While the department greatly appreciates the inclusion of these
12 provisions in the contracts of data resellers, we have always
13 held those who receive our data responsible for the misuse of
14 that particular data, regardless of misuse by the department's
15 customers, or customers of our resellers. Our means of
16 enforcement, however, is limited. Under the current statutory
17 scheme and following a misuse of data, the department only has
18 the authority to terminate access to the data and refer the
19 misuse to law enforcement. The department does not have the
20 authority to create a cause of action against any of our data
21 customers.

22

23 On the other hand, since the enactment of DPPA, there has always
24 been a federal cause of action for the person whose data was
25 illegally disclosed.

26

1 ~~Notably though, we do have the authority to exercise discretion~~
2 ~~in who receives our data. Part of that discretion is to ensure~~
3 ~~those who resell or redisclose our data adequately vet the~~
4 ~~purported permitted uses of their customers.~~

5
6 No change is necessary.

7
8 COMMENT

9 Experian, Polk, and Quickview asked the department to change the
10 mandatory termination provisions of §217.128 to discretionary
11 provisions.

12
13 RESPONSE

14 The department agrees with this comment and will make
15 termination of a service agreement discretionary. It has always
16 been the department's goal to protect personal information while
17 providing a service to our customers, that includes developing
18 safeguards and remediation plans.

19
20 STATUTORY AUTHORITY

21 The amendments and new sections are adopted under Transportation
22 Code, §1002.001, which provides the board of the Texas
23 Department of Motor Vehicles (board) with the authority to adopt
24 rules that are necessary and appropriate to implement the powers
25 and the duties of the department under the Transportation Code;
26 and more specifically, Transportation Code, §730.014, which

1 provides that the department may adopt rules to implement and
2 administer Transportation Code, Chapter 730, Motor Vehicle
3 Records Disclosure Act.

4

5 CROSS REFERENCE TO STATUTE

6 Government Code, §552.130; Transportation Code, Chapter 730; and
7 18 U.S.C. §2721 et seq.

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1 SUBCHAPTER F. MOTOR VEHICLE RECORDS [~~RECORD INFORMATION~~]

2 §217.122. Definitions.

3 The following words and terms, when used in this subchapter,
4 shall have the following meanings, unless the context clearly
5 indicates otherwise.

6 (1) Authorized recipient--A person receiving motor
7 vehicle records as defined by this subchapter, in a manner
8 authorized by Transportation Code, Chapter 730.

9 (2)[+1] Department--Texas Department of Motor
10 Vehicles.

11 (3)[+2] Motor vehicle records [~~record information~~]
12 Information regarding the titling or registration of motor
13 vehicles, which may include the make, vehicle identification
14 number, year, model, body style, license number of a motor
15 vehicle, and the name, address, and social security number of an
16 owner or lienholder.

17 (4)[+3] Personal information--Information that
18 identifies an individual, including an individual's photograph
19 or computerized image, social security number, driver
20 identification number, personal identification certificate
21 number, name, telephone number, medical or disability
22 information, license plate number, or address other than the
23 postal routing code.

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1 (5) Requestor--A person seeking personal information
2 contained in motor vehicle records directly from the department.

3 (6)[(4)] Service agreement--A contractual agreement
4 that allows individuals, businesses or governmental entities
5 [agencies] or institutions to access the department's motor
6 vehicle records.

7 (7)[(5)] Written request--A request made in writing,
8 including electronic mail, electronic media, and facsimile
9 transmission.

10
11 §217.123. Access to Motor Vehicle Records.

12 (a) Request for records. A requestor [~~person seeking motor~~
13 ~~vehicle record information~~] shall submit a written request on
14 the form required by the department. Information will be
15 released only in accordance with Title 18 U.S.C. §2721 et seq.,
16 Transportation Code, Chapter 730, [~~and~~] Government Code,
17 §552.130, and this subchapter. A completed and properly executed
18 form must include, at a minimum:

19 (1) the name and address of the requestor;

20 (2) the Texas license number, title or document
21 number, or vehicle identification number of the motor vehicle
22 about which information is requested;

23 (3) a photocopy of the requestor's identification;

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1 (4) a statement that the requested information may
2 only be released if the requestor is the subject of the record,
3 if the requestor has written authorization for release from the
4 subject of the record, or if the intended use is for a permitted
5 use as indicated on the form;

6 (5) a certification that the statements made on the
7 form are true and correct; and

8 (6) the signature of the requestor.

9 (b) Identification required. A requestor [~~person~~] may not
10 apply for receipt of personal information unless the requestor
11 [~~person~~] presents current photo identification containing a
12 unique identification number. The identification document must
13 be a:

14 (1) driver's license or state identification
15 certificate issued by a state or territory of the United States;

16 (2) United States or foreign passport;

17 (3) United States military identification card;

18 (4) United States Department of Homeland Security,
19 United States Citizenship and Immigration Services, or United
20 States Department of State identification document;

21 (5) concealed handgun license or license to carry a
22 handgun issued by the Texas Department of Public Safety under
23 Government Code, Chapter 411, Subchapter H; or

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1 (6) copy of current law enforcement credentials if the
2 requestor is a law enforcement officer.

3 (c) Electronic access. The department may make motor
4 vehicle records [~~record information~~] available under the terms
5 of a written service agreement.

6 (1) Agreement with business or individuals. The
7 written service agreement with a business or individual must
8 contain:

9 (A) the specified purpose of the agreement;

10 (B) an adjustable account, if applicable, in
11 which an initial deposit and minimum balance is maintained in
12 accordance with §217.124 of this title (relating to Cost of
13 Motor Vehicle Records);

14 (C) termination and default provisions;

15 (D) the contractor's signature;

16 (E) a statement that the use of motor vehicle
17 records [~~record information~~] obtained by virtue of a service
18 agreement is conditional upon its being used:

19 (i) in accordance with 18 U.S.C. §2721 et
20 seq. and Transportation Code, Chapter 730; and

21 (ii) only for the purposes defined in the
22 agreement; and

23 (F) the statements required by subsection (a) of

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1 this section.

2 (2) Agreements with Texas governmental entities.

3 (A) The written service agreement with a Texas
4 governmental entity must contain:

5 (i) the specified purpose of the agreement;

6 (ii) a statement that the use of motor
7 vehicle records [~~record information~~] obtained by virtue of a
8 service agreement is conditional upon its being used in
9 accordance with 18 U.S.C. §2721 et seq. and Transportation Code,
10 Chapter 730, and only for the purposes defined in the agreement;

11 (iii) the statements required by subsection
12 (a) of this section;

13 (iv) the signature of an authorized
14 official; and

15 (v) an attached statement citing the
16 entity's authority to obtain social security number information,
17 if applicable.

18 (B) Texas governmental entities, as defined in
19 Government Code, §2252.001, and including the Texas Law
20 Enforcement Telecommunication System and toll project entities,
21 as defined by Transportation Code, §372.001, are exempt from the
22 payment of fees, except as provided by §217.124(e) of this
23 title.

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1 (d) Ineligibility to receive personal information. The
2 department may prohibit a person, business, or Texas
3 governmental entity from receiving personal information if the
4 department finds a violation of a term or condition of the
5 agreement entered into in accordance with subsection (c) of this
6 section.

7 (e) Initial deposits and minimum balances. Notwithstanding
8 §217.124 of this title, the department may modify initial
9 deposit and minimum balance requirements on a case by case basis
10 depending on customer usage.

11
12 §217.125. Additional Documentation Related to Certain Permitted
13 Uses.

14 (a) The department may require a requestor to provide
15 reasonable assurance as to the identity of the requestor and
16 that the use of motor vehicle records is only as authorized
17 under Transportation Code, §730.012(a). Where applicable, each
18 requestor submitting a request for motor vehicle records shall
19 provide documentation satisfactory to the department that they
20 are authorized to request the information on behalf of the
21 business or government entity authorized to receive the
22 information.

23 (b) Disclosure under the following permitted uses requires

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1 additional documentation submitted to the department:

2 (1) Transportation Code, §730.007(2)(C) requires
3 submitting the information the business is attempting to verify
4 against the department's motor vehicle records.

5 (2) Transportation Code, §730.007(2)(D) requires
6 submitting proof of legal proceeding, or if no proceeding has
7 been initiated, proof in anticipation of proceeding.

8 (3) Transportation Code, §730.007(2)(E) requires
9 submitting documentation sufficient to prove the requestor is
10 employed in a researching occupation.

11 (4) Transportation Code, §730.007(2)(F) requires
12 submitting a license number provided by the Texas Department of
13 Insurance, a license number the insurance support organization
14 is working under, or proof of self-insurance.

15 (5) Transportation Code, §730.007(2)(G) requires
16 submitting a license number provided by the Texas Department of
17 Licensing and Regulation.

18 (6) Transportation Code, §730.007(2)(H) requires
19 submitting a license number provided by the Texas Department of
20 Public Safety.

21 (7) Transportation Code, §730.007(2)(I) requires
22 submitting a copy of the commercial driver's license.

23 (8) Transportation Code, §730.007(2)(J) requires

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1 submitting documentation to relate the requested personal
2 information with operation of a private toll transportation
3 facility.

4 (9) Transportation Code, §730.007(2)(K) requires a
5 consumer reporting agency, as defined by the Fair Credit
6 Reporting Act (15 U.S.C. §1681 et. seq.), to submit
7 documentation on official letterhead indicating a permitted use
8 for personal information, as defined by that Act.

9 (c) Regarding §217.125(b)(4-6), the department may accept
10 out-of-state licenses as documentation of a permitted use. Under
11 this subsection, the department will limit access to a record-
12 by-record basis.

13
14 §217.126. Limitations on Resale and Redisclosure.

15 (a) Authorized recipients may only resell or redisclose
16 personal information to other authorized recipients and not in
17 the identical or substantially identical format as provided by
18 the department.

19 (b) Authorized recipients may not resell or redisclose the
20 entire motor vehicle records database in its complete bulk
21 format.

22 (c) Any authorized recipient reselling or redisclosing
23 personal information must inform the person to whom they are

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1 reselling or redisclosing of their obligations under
2 Transportation Code, Chapter 730 and this subchapter.

3 (d) Any authorized recipient is responsible for misuse of
4 personal information by any person receiving their version of
5 the information, regardless of whether the authorized recipient
6 approved or was aware of subsequent transfers of the
7 information.

8
9 §217.127. Records Maintained by Recipients Who Resell or
10 Rediscover Personal Information.

11 (a) Authorized recipients who resell or redisclose personal
12 information are required to maintain records of that
13 transaction.

14 (b) Records must be maintained for not less than five years
15 and must include:

16 (1) the name and contact information of any recipient
17 of resold or redisclosed personal information contained in motor
18 vehicle records;

19 (2) the permitted use for which the records were
20 released, or documentation in accordance with 217.125(b);

21 (3) the quantity of records sold or disclosed to each
22 subsequent person;

23 (4) a statement by the authorized recipient specifying

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1 what data was resold or redisclosed and in what format; and

2 (5) any other documentation of the agreement to resell
3 or redisclose personal information contained in motor vehicle
4 records.

5
6 §217.128. Department Review of Recipient's Records of Resale or
7 Redisclosure.

8 (a) The department has the authority to request and review
9 records kept by all authorized recipients who resell or
10 redisclose personal information.

11 (b) This request will be made in writing.

12 (c) The requested records must be provided to the
13 department within 30 days of the request.

14 (d) Failure to fully respond to the department's request
15 may result in termination of access to motor vehicle records
16 under Transportation Code, §730.007.

17 (e) Upon receipt of the requested records, the department
18 will evaluate the records for compliance with the service
19 agreement, applicable statutes, and rules.

20 (f) If it is determined that an authorized recipient is not
21 in compliance with the service agreement, applicable statutes,
22 and rules, the service agreement may be terminated.

23

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1 §217.129. Ineligibility to Receive Motor Vehicle Records.

2 (a) The department may deny a requestor's access to motor
3 vehicle records if it determines withholding the information
4 benefits the public's interest more than releasing the
5 information.

6 (b) If the department determines an authorized recipient of
7 motor vehicle records has violated a clause or term of the
8 service agreement, and that service agreement has been
9 terminated, that authorized recipient cannot enter into a
10 subsequent service agreement unless approved to do so under
11 §217.130 of this title (relating to Approval for Persons Whose
12 Access to Motor Vehicle Records Has Previously Been Terminated).

13 (c) Termination of the service agreement caused by any
14 member of a business, partnership, or entity shall be effective
15 on the whole organization. Subsequent businesses formed by any
16 member, officer, partner or affiliate of an entity whose service
17 agreement has been terminated will also be ineligible to receive
18 records.

19
20 §217.130. Approval for Persons Whose Access to Motor Vehicle
21 Records Has Previously Been Terminated.

22 (a) A requestor whose service agreement was previously
23 terminated, but who is not subject to Transportation Code,

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1 §730.016, shall submit a written request for reapproval on the
2 form required by the department.

3 (b) In addition to the requirements of §217.123 of this
4 title (relating to Access to Motor Vehicle Records), the request
5 must contain:

6 (1) any documents indicating remedial efforts the
7 requestor has undertaken to prevent the unlawful disclosure of
8 motor vehicle records,

9 (2) any documents indicating agreements between the
10 requestor and third parties receiving resold or redisclosed
11 motor vehicle records, and

12 (3) a statement that the requestor will notify the
13 department before reselling or redisclosing any motor vehicle
14 records for the time period prescribed by the department,
15 including all of the information required under §217.127(b) of
16 this title (relating to Records Maintained by Recipients Who
17 Resell or Redisclose Personal Information). The notification
18 must include the name, address, and contact information of the
19 third party requesting resold or redisclosed motor vehicle
20 records, and must include the form(s) used to verify the third
21 party's lawful purpose in obtaining motor vehicle records.

22 (c) Failure to comply with any of the terms of this section
23 or a re-offense of the service agreement will result in the

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- 1 termination of the service agreement and the permanent inability
- 2 to receive motor vehicle records.

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