June 29, 2020

VIA ELECTRONIC FILING

Mr. William McGeveran Reporter
ULC Collection and Use of Personally Identifiable Data
Mondale Hall
229 19th Avenue South
Minneapolis, MN 55455

   RE: Tentative First Read Draft of the Collection and Use of Personally Identifiable Data Act

Dear Mr. McGeveran:

  On behalf of the Alliance for Automotive Innovation ("Auto Innovators")[1], we appreciate the opportunity to provide feedback to the Drafting Committee on the tentative first read draft of the *Collection and Use of Personally Identifiable Data Act* ("draft").

  The members of Auto Innovators are committed to protecting the privacy of their customers and have long been responsible stewards of their customers' information. In fact, in 2014, the auto industry came together to develop the *Privacy Principles for Vehicle Technologies and Services*. These Principles represent a proactive and unified commitment by automakers to protect personal information collected through in-vehicle technologies and distinguish our industry as one that is dedicated to safeguarding consumer privacy.

  We generally oppose efforts to enact state-level privacy bills and believe that the best way to protect consumers is through a single, national privacy framework that provides consistent protections to consumers across the United States. That being said, in the absence of a federal privacy law, we appreciate efforts to foster uniformity and consistency among the states and to provide additional clarity to consumers and businesses on consumer privacy.

  We respectfully offer the following comments and recommendations to the Drafting Committee for its consideration. We welcome the opportunity to discuss any of these comments or recommendations further or to provide any additional context or information about the impact the draft would have on the

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[1] Formed in 2020 through a combination of Global Automakers and the Alliance for Automobile Manufacturers, the Alliance for Automotive Innovation is the singular, authoritative, and respected voice of the automotive industry. Focused on creating a safe and transformative path for sustainable industry growth, the Alliance for Automotive Innovation represents the manufacturers producing nearly 99 percent of cars and light trucks sold in the U.S., original equipment suppliers, technology and other automotive-related companies and trade associations.

auto industry and the connected services our companies provide to drivers and passengers across the country.

Comments Specific to the Automotive Industry

I.   Inclusion of Device-Related Data Creates Challenges

Vehicles may be associated with an owner or lessee but are often used by individuals other than the owner or lessee (e.g., a spouse, other family members, a friend or neighbor, a rental car customer, etc.). As a result, data may be related to a vehicle and the vehicle may be associated with a vehicle owner, but it may not necessarily follow that the vehicle owner should have rights (e.g., access rights) to that data. This issue would be at least partially addressed by limiting the draft's applicability to personal data associated with an individual data subject. For this reason, we suggest the following modifications:

> *SECTION 2. DEFINITIONS.*
> *(5) "Device" means any physical object that connects to the Internet or to another device. ~~Data related to a device, including a unique identification number and an Internet protocol address, is personal data if it can be associated with a particular data subject by using a reasonable amount of effort~~.*
>
> *(8) "Personal data" means information that identifies or describes a particular data subject or that can be associated with a particular data subject by a reasonable amount of effort, whether or not the data has been collected directly from a data subject. The term includes probabilistic inferences about the data subject, including inferences derived from profiling and ~~information that identifies a household or device if it can be associated with a particular data subject by a reasonable amount of effort.~~ The term does not include deidentified data.*

If the device language is maintained, we suggest that the definition of "device" be modified such that device-related data is considered personal data only if it is maintained by the data controller in a way that links the data to the data subject. We also suggest that the definition of "personal data" be modified to exclude pseudonymized data. Automakers may collect and maintain vehicle data for safety and/or quality purposes. Data that is collected by the automaker for these purposes and stored in a way that links the data to a particular vehicle, but does not associate the data with a particular individual, should be excluded from the draft. To that end, we suggest the following modifications:

> *SECTION 2. DEFINITIONS.*
> *(5) "Device" means any physical object that connects to the internet or to another device. Data related to a device, including a unique identification number or Internet protocol address, is personal data if it ~~can be associated with a particular data subject by using a reasonable amount of effort~~ is maintained by the data controller in a way that associates it with a particular data subject.*
>
> *(8) "Personal data" means information that identifies or describes a particular data subject or that ~~can be associated with a particular data subject by a reasonable amount of effort~~ is maintained by the data controller in a way that associates it with a particular data subject. Personal data need not have been collected directly from a data subject. The term includes probabilistic inferences about the data subject, including inferences derived from profiling*

and ~~information that identifies a household or device if it can be associated with a particular data subject by a reasonable amount of effort.~~ *The term does not include deidentified data or pseudonymized data.*

(X) "Pseudonymized" means the processing of information so that is not associated with a particular data subject without the use of additional information, provided that the additional information is kept separately and is subject to technical and organizational measures to ensure that the information is not associated with a particular data subject.

II.   Data Used for Product Safety and Quality Purposes Should be Preserved

Automakers may collect and maintain data for vehicle safety and quality purposes. These important purposes should be preserved and protected. To that end, we propose the following modifications:

SECTION 3. SCOPE.
(d) Nothing in this [act] may be construed to prevent the collection, authentication, maintenance, retention, disclosure, sale, processing, communication, or use of personal information necessary to:

(X) effectuate a product recall;

(X) fulfill the terms of a written warranty; and

(X) perform system maintenance, debug systems, or repair errors to ensure the functionality of a product or service provided by the data controller or processor.

III.   Reasonable Limitations on the Right to Correct Inaccuracies Should be Incorporated

Some of the data that may be collected from vehicles is data generated by vehicle systems and components, including sensors. An accuracy challenge from a data subject related to this type of data may create unnecessary and unresolvable challenges for vehicle or component manufacturers. This situation could potentially be addressed by incorporating a reasonableness component into the right to correct inaccuracies. To that end, we propose the following modification:

SECTION 4. DATA SUBJECT'S RIGHTS GENERALLY.
(3) to have a data controller correct inaccuracies in the data subject's personal data retained or processed by the data controller, although a data controller is not required to correct personal data if the data controller determines that the request is frivolous or if the data subject fails to provide sufficient information to investigate the accuracy of the personal data.

IV.   Accurate Representations Should be Permitted

Vehicles may generate a significant volume of data about system performance and function. This data, if presented in raw form and in its entirety, will almost certainly be useless to consumers. To address this concern, the bill should allow data controllers to provide meaningful summaries of the data collected to consumers. To that end, we propose the following modifications:

SECTION 4. DATA SUBJECT'S RIGHTS GENERALLY.
(2) to have a data controller provide a copy or accurate representation of the data subject's personal data under Section 5;

SECTION 5. DATA SUBJECT'S RIGHT TO COPY OF PERSONAL DATA.
(a) Upon request, a data controller shall provide a data subject with a copy or accurate representation of the data subject's personal data once during any 12-month period free of charge.

V.   Reasonable Flexibility Should be Provided for Notice Requirement

Vehicle manufacturers should be permitted to provide notice to vehicle owners or lessees at the time the vehicle is purchased or leased, even though data may not be collected until the owner or lessee drives the vehicle or uses connected vehicle services. Moreover, a vehicle will often change owners during its lifetime. When a vehicle is transferred from one owner to another, automakers often do not receive notice of the transfer. Yet the transferred vehicle may continue to transmit data. To these ends, we propose the following modifications:

SECTION 12. DATA CONTROLLER'S DUTY OF TRANSPARENCY.
(d) The notice under this section must be reasonably available at or prior to the time personal data is collected from a data subject. Where the ownership of a device is transferred directly from one data subject to another data subject, a data controller may satisfy its obligation to provide notice under this section by making the privacy notice publicly available.

Comments of General Applicability

I.   State and Local Governments Should be Covered

To ensure consistent protections for consumers, the privacy protections laid out in the draft should apply whether data is being collected and processed by a private sector company or by a government entity. To that end, we suggest the following modification:

SECTION 2. DEFINITIONS.
(7) "Person" means an individual, estate, business or nonprofit entity, or other legal entity. ~~The term does not include a public corporation, government or governmental subdivision, agency, or instrumentality.~~

SECTION 3. SCOPE.
(b) Subject the subsection (c), this Act does not apply to

~~(6) state or local government;.~~

II.   Applicability Triggers Should Apply Consistently to Residents of the State

To provide for consistency, the applicability triggers laid out in Section 3 should all relate specifically to residents of the state. To that end, we propose the following modification:

SECTION 3. SCOPE.
This [act] applies to the commercial activities of a person that conducts business this state or produces products or provides services targeted to this state, provided that the person:

> *(1) is the custodian of personal data concerning more than [50,000] data subjects who reside in the state in one year;*

III.   Vendor-Related and Other Business-to-Business Data Should be Excluded

The draft is appropriately focused on protecting the privacy of consumers. Consistent with that focus, the draft should exclude vendor-related data and other business-to-business data. To that end, we propose the following modification:

> *SECTION 3. SCOPE.*
> *(a) Subject to subsection (c), this [act] does not apply to:*
>
> > *(X) information reflecting a written or verbal communication or a transaction between a data controller or processer and an individual, where the individual is acting as an employee, owner, director, officer, or contractor of a company, partnership, sole proprietorship, non-profit, or government agency and whose communications or transaction with the data controller or processor occur solely within the context of the data controller or processor conducting due diligence regarding, or providing or receiving a product or service to or from such company, partnership, sole proprietorship, non-profit, or government agency.*

IV.   Employee Exception Should be Expanded to Include Contractors

The draft appropriately excludes personal data collected or maintained in the context of an employer-employee relationship. The exception should be extended to also apply to contractors.

> *SECTION 3. SCOPE.*
> *(b) Subject to subsection (c), this [act] does not apply to:*
>
> > *(7) personal data collected or retained by ~~an employer~~ a data controller or processor with regard to its employees or contractors that is directly related to the employment or contract relationship.*

V.   Reasonable Limitations Should be Placed on Right to Copy of Personal Data

The draft should place reasonable limitations on the overall number of requests that a data subject can make in a single year to a data controller and should restrict the data that can be requested to data collected over a particular period of time. To that end, we propose the following modifications:

> *SECTION 5. DATA SUBJECT'S RIGHT TO COPY OF PERSONAL DATA.*
> *(a) Upon request, a data controller shall provide a data subject with a copy of the data subject's personal data collected over the prior 12 months ~~once~~ no more than twice per year during any 12-month period ~~free of charge~~.*

(b) A data controller must provide the first copy of personal data to a data subject free of charge, but may charge a reasonable fee based on actual administrative costs to comply with ~~additional requests~~ a second request from the data subject.

VI. Means of Exercising Rights Should be Clear to Both Data Subjects and Data Controllers

The means by which data subjects are to exercise their rights should be clear and transparent to both data subjects and data controllers. To that end, we propose the following modification:

> *SECTION 7. DATA SUBJECT'S RIGHTS, MEANS OF EXERCISING.*
> *(a) A data subject may exercise rights under this [act] by notifying the data controller ~~by any reasonable means~~ through the means identified by the data controller under paragraph 12(a)(6) of the data subject's intent to exercise the right. A parent of a child under age 18 may exercise a right on behalf of the child.*

VII. Data Privacy Commitment is Unnecessary

The Privacy Notice required under Section 12 should be sufficient and appropriate to provide information about a data controller's practices and processes directly to data subjects and is already subject to review and enforcement by the appropriate consumer protection authorities. As a result, the Data Privacy Commitment laid out in Section 8 is duplicative and unnecessary. For that reason, we propose that Section 8 be removed.

VIII. Attorney General Rulemaking May Undermine Uniformity

Section 9 of the bill sets up a situation where individual states – through state-specific regulations and enforcement – will determine what constitutes unfair, deceptive, or abusive practices. The potential for different determinations across states seems to undermine the general goal of uniformity. To that end, we propose that Section 9 be removed.

IX. Data Minimization Requirement Should be Clarified

Well-intentioned people may disagree on whether data is absolutely necessary to achieve the purposes of processing. To help address this concern, the duty of data minimization in the draft should be modified to incorporate a reasonableness standard.

> *SECTION 11. CONTROLLER'S OR DATA PROCESSOR'S DUTY OF DATA MINIMIZATION. A data controller or data processor shall not knowingly collect, process, or retain more personal data than reasonably necessary to achieve the purposes of processing. When a controller transfers personal data to a processor, the controller shall transfer only as much personal data as is reasonably necessary to complete the processor's processing. A processor shall delete, deidentify, or return personal data to the relevant controller at the end of the provision of services or as otherwise specified by agreement.*

X.   Respect for Context Should be Accommodated

If personal data is processed consistent with the context in which the personal data was collected, or consistent with the relationship between the data controller and the data subject, it should be permitted. To that end, we propose the following modification:

> *SECTION 13. DATA CONTROLLER'S DUTY OF PURPOSE LIMITATION.*
> *A data controller shall not process personal data, or permit a data processor or other person to process personal data, for a purpose that is not specified in the notice to data subjects under Section 12 or that are not otherwise consistent with the context in which the personal data was collected.*

XI.   Data Controllers and Data Processors Should Have Flexibility in Allocating Resources

Data controllers and data processers should be provided flexibility in allocating resources and responsibilities to meet the requirements in the bill. The designation of a single person to serve in the role of Data Privacy Officer is not necessary for compliance, is overly prescriptive, and unnecessarily precludes other organizational structures that may be just as effective – if not more effective – than the designation of Data Privacy Officer. To that end, we propose that Section 15 be stricken.

XII.   Data Privacy Assessment is not Necessary

In general, the rights and obligations set out in the bill are sufficient to ensure that data controllers take appropriate actions to assess and mitigate privacy-related risks without the need to mandate a privacy risk assessment. To that end, we propose that Section 16 be removed.

If Section 16 is not removed, modifications should be made to reduce ambiguities for data controllers or processors and to establish clear and objective criteria. To that end, we suggest the following modifications:

> *SECTION 16. DATA PRIVACY ASSESSMENT.*
> *A data controller or data processor shall prepare in a record, to the extent not previously prepared, a data privacy assessment of ~~each~~ processing undertaken by the controller or processor to evaluate ~~all~~ material risks, harms, and benefits of processing.*
>
> *(b) A data privacy assessment shall evaluate the:*
>
> > *(9) measures the controller or processor has undertaken to mitigate ~~any~~ privacy risks;*
>
> *(c) Privacy risks evaluated in a data privacy assessment must encompass risks of ~~all~~ potential harms to data subjects, including*
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> > *(1) accidental disclosure, theft, or other breaches of security causing personal data to be revealed to persons without authorization;*
> >
> > *(2) identity theft;*
> >
> > *~~(3) harassment;~~*

(4) unwanted profiling;

(5) stigmatiziation or reputational harm;

(6) emotional harm including anxiety, embarrassment, fear, and other demonstrable mental harms; and

(7) other foreseeable outcomes that would be highly offensive to the reasonable person.

XIII.   Private Right of Action Should be Removed

Regulatory enforcement via the Attorney General is likely sufficient and appropriate on its own. To that end, we propose that the private right of action laid out in Section 20 be removed.

Consistent with this approach, we propose the following modification:

> *SECTION 14. DATA PROCESSING BY WRITTEN AGREEMENT.*
> *(b) Processing personal data without a written agreement that complies with this section is an [unfair act and practice] subject to enforcement under Section 19. A data controller that authorizes the processing of information by another without an agreement reasonably consistent with this section is subject to a private cause of action under Section 20.*

Thank you again for the opportunity to provide this feedback and input. We look forward to continuing to work with you on this effort and to continue to support our members in their efforts to preserve and protect consumer privacy.

Sincerely,

Hilary Cain   **Jessica Simmons**
Vice President   Assistant General Counsel
Technology, Innovation, & Mobility Policy