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SUBCHAPTER H. RESIDENTIAL
CHILD-CARE: DRUG TESTING AND
LAW ENFORCEMENT ADMISSIONS
DIVISION 2. TAKING POSSESSION
OF A CHILD DIRECTLY FROM A LAW
ENFORCEMENT OFFICER

40 TAC §§745.4201, 745.4203, 745.4205

The amendments are proposed under Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of DFPS to HHSC.

The amendments implement Human Resources Code §§42.041, 42.042, and 42.0461; and the Code of Criminal Procedure, Article 2.273. The amendments correspond with the regulatory functions transferred from DFPS to HHSC.

§745.4201. May I take possession of a child from a law enforcement [or juvenile probation] officer?

You may take possession of a child directly from a law enforcement officer if you are:

- (1) A general residential operation licensed to provide emergency care services [shelter]; or
- (2) A licensed child-placing agency that we have authorized to take possession of children from a law enforcement [or juvenile probation] officer.

§745.4203. How does a child-placing agency become authorized to take possession of a child from a law enforcement [or juvenile probation] officer?

If you are a child-placing agency, the following must occur before you can take possession of a child from a law enforcement [or juvenile probation] officer:

- (1) You submit to us a Request to Accept Children from a Law Enforcement Officer form;
- (2) We review the request to determine whether you are equipped to accept these types of emergency admissions; and
- (3) If we authorize you to accept such admissions, we add your ability to accept these admissions to the conditions on your license.

§745.4205. What must I do when I take possession of a child from a law enforcement [or juvenile probation] officer?

When you take possession of a child from a law enforcement officer, [or juvenile probation office] you must:

- (1) With the assistance of the officer who has the child, obtain and document any available information regarding: [complete an Admission of a Child from a Law Enforcement Officer form;]
 - (A) The identity of the child, including name, age, date of birth, gender, race, hair color, eye color, height, and address;
 - (B) The identity of the child's parents, including names, dates of birth, addresses, and phone numbers;
 - (C) Individuals or relatives that the child may be released to;

(D) The officer that you are taking possession of the child from, including the officer's full name, badge number, department the officer works for, and case number; and

(E) Any other information that must be included in the child's record for an emergency admission, as listed in 26 TAC §748.1271 (relating to At the time of an emergency admission, what information must I document in the child's record?) or 26 TAC §749.1189 (relating to At the time of an emergency admission, what information must I document in the child's record?);

(2) Immediately notify the Department of Family and Protective Services (DFPS) [DFPS] that you have taken possession of the child by calling the Texas Abuse Hotline [abuse neglect hotline]; and

(3) Provide the information obtained and documented from [completed form referred to in] paragraph (1) of this section to the DFPS investigator who responds to the call.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2018.

TRD-201800887

Karen Ray

Chief Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 15, 2018

For further information, please call: (512) 438-5559

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TITLE 43. TRANSPORTATION

**PART 10. TEXAS DEPARTMENT OF
MOTOR VEHICLES**

**CHAPTER 217. VEHICLE TITLES AND
REGISTRATION**

**SUBCHAPTER F. MOTOR VEHICLE RECORD
INFORMATION**

43 TAC §§217.122, 217.123, 217.125 - 217.130

The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 217, Vehicle Titles and Registration, Subchapter F, Motor Vehicle Record Information, §217.122, Definitions, and §217.123, Access to Motor Vehicle Records. The department also proposes new §217.125, Additional Documentation Related to Certain Permitted Uses, §217.126, Limitations on Resale and Rediscovery, §217.127, Records Maintained by Recipients Who Resell or Rediscover Motor Vehicle Records, §217.128, Department Review of Recipient's Records of Resale or Rediscovery, §217.129, Ineligibility to Receive Motor Vehicle Records, and §217.130, Approval for Persons Whose Access to Motor Vehicle Records Has Previously Been Terminated.

EXPLANATION OF PROPOSED AMENDMENTS

The amendments to §217.122 differentiate those who request and receive motor vehicle records directly from the department with those who receive records by resale or rediscovery.

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

EXPLANATION OF PROPOSED NEW SECTIONS

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

Proposed new §217.125 states what additional documentation is needed when submitting a request for motor vehicle records.

Proposed new §217.126 limits the forms motor vehicle records may be resold or redisclosed and requires anyone reselling or redisclosing motor vehicle records to inform the recipient of their obligations under the Transportation Code.

Proposed new §217.127 states what records must be maintained by those who resell or redisclose motor vehicle records.

Proposed new §217.128 states the department's process in reviewing records kept by those who resell or redisclose motor vehicle records.

Proposed new §217.129 states when a requestor of motor vehicle records is ineligible to receive those records.

Proposed new §217.130 states how a requestor of motor vehicle records, whose access was previously revoked, may regain access to records.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the proposed amendments and new sections are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposals.

Jeremiah Kuntz, Director of the Vehicle Titles and Registration Division, has determined that there will be no impact on local economies or overall employment as a result of enforcing or administering the proposed amendments and new sections.

PUBLIC BENEFIT AND COST

Mr. Kuntz has also determined that for each year of the first five years the proposed amendments and new sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments and new sections will be to ensure only recipients permitted by law obtain motor vehicle records. There are no anticipated economic costs for persons required to comply with the proposed amendments and new sections. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT

The department has determined that during the first five years the proposed amendments and new sections are in effect, no government program would be created or eliminated. Implementation of the proposed amendments and new sections would not require the creation of new employee positions or elimination of

existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. Additionally, the proposed amendments and new sections do not create a new regulation, or expand, limit, or repeal an existing regulation. Implementation does not affect the number of individuals subject to the rules applicability and will not affect this state's economy.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments and new sections may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on April 16, 2018.

STATUTORY AUTHORITY

The proposed amendments and new sections are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; and more specifically, Transportation Code, §730.014, which provides that the department may adopt rules to implement and administer Transportation Code, Chapter 730, Motor Vehicle Records Disclosure Act.

CROSS REFERENCE TO STATUTE

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

§217.122. Definitions.

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

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

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

(3) [(2)] Motor vehicle records [~~record information~~]--Information regarding the titling or registration of motor vehicles, which may include the make, vehicle identification number, year, model, body style, license number of a motor vehicle, and the name, address, and social security number of an owner or lienholder. As used in this subchapter, the term includes any personal information contained in such records.

(4) Original recipient--An authorized recipient receiving motor vehicle information directly from the department.

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

(6) Requestor--A person seeking motor vehicle records from the department.

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

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

§217.123. *Access to Motor Vehicle Records.*

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

- (1) the name and address of the requestor;
- (2) the Texas license number, title or document number, or vehicle identification number of the motor vehicle about which information is requested;
- (3) a photocopy of the requestor's identification;
- (4) a statement that the requested information may only be released if the requestor is the subject of the record, if the requestor has written authorization for release from the subject of the record, or if the intended use is for a permitted use as indicated on the form;
- (5) a certification that the statements made on the form are true and correct; and
- (6) the signature of the requestor.

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

- (1) driver's license or state identification certificate issued by a state or territory of the United States;
- (2) United States or foreign passport;
- (3) United States military identification card;
- (4) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State identification document;
- (5) concealed handgun license or license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H; or
- (6) copy of current law enforcement credentials if the requestor is a law enforcement officer.

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

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

- (A) the specified purpose of the agreement;
- (B) an adjustable account, if applicable, in which an initial deposit and minimum balance is maintained in accordance with §217.124 of this title (relating to Cost of Motor Vehicle Records);
- (C) termination and default provisions;
- (D) the contractor's signature;
- (E) a statement that the use of motor vehicle record information obtained by virtue of a service agreement is conditional upon its being used:

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

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

(F) the statements required by subsection (a) of this section.

(2) Agreements with Texas governmental entities.

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

- (i) the specified purpose of the agreement;
- (ii) a statement that the use of motor vehicle records [~~record information~~] obtained by virtue of a service agreement is conditional upon its being used in accordance with 18 U.S.C. §2721 et seq. and Transportation Code, Chapter 730, and only for the purposes defined in the agreement;
- (iii) the statements required by subsection (a) of this section;
- (iv) the signature of an authorized official; and
- (v) an attached statement citing the entity's authority to obtain social security number information, if applicable.

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

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

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

§217.125. *Additional Documentation Related to Certain Permitted Uses.*

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

(b) The following permitted uses of motor vehicle records require additional documentation submitted to the department prior to disclosure:

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

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

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

(4) Transportation Code, §730.007(2)(F) requires submitting a license number provided by the Texas Department of Insurance,

a license number the insurance support organization is working under, or proof of self-insurance.

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

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

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

(8) Transportation Code, §730.007(2)(J) requires submitting documentation to relate the requested personal information with operation of a private toll transportation facility.

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

§217.126. Limitations on Resale and Redislosure.

(a) Authorized recipients may only resell or redisclose motor vehicle records to other authorized recipients and not in the identical or similar format as provided by the department.

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

(c) Any authorized recipient reselling or redisclosing motor vehicle records must inform the person to whom they are reselling or redisclosing of their obligations under Transportation Code, Chapter 730 and this subchapter.

(d) Any original recipient is responsible for misuse of motor vehicle records by any person receiving their version of the information, regardless of whether the original authorized recipient approved or was aware of subsequent transfers of the information.

§217.127. Records Maintained by Recipients Who Resell or Rediscover Motor Vehicle Records.

(a) Authorized recipients who resell or redisclose motor vehicle records are required to maintain records of that transaction.

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

(1) the name and contact information of any recipient of resold or redisclosed motor vehicle records;

(2) the permitted use for which the motor vehicle records were released;

(3) the quantity of motor vehicle records sold or disclosed to each subsequent person;

(4) a statement by the authorized recipient specifying what data was resold or redisclosed and in what format; and

(5) any other documentation of the agreement to resell or redisclose motor vehicle records.

§217.128. Department Review of Recipient's Records of Resale or Rediscovery.

(a) The department has the authority to request and review records kept by all authorized recipients who resell or redisclose motor vehicle records.

(b) This request will be made in writing to the recipient.

(c) The recipient must provide the requested records within 30 days of the date of the department's request.

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

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

(f) If it is determined that an original recipient is not in compliance with the service agreement, applicable statutes, and rules, the service agreement will be terminated immediately.

§217.129. Ineligibility to Receive Motor Vehicle Records.

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

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

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

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

(a) A requestor whose service agreement was previously terminated, but who is not subject to Transportation Code, §730.016, shall submit a written request for reapproval on the form required by the department.

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

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

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

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

(c) Failure to comply with any of the terms of this section or a re-offense of the service agreement will result in the termination of the service agreement and the permanent inability to receive motor vehicle records.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: April 15, 2018

For further information, please call: (512) 465-5665