

June 23, 2022

Mr. Phil Weiser  
Attorney General  
Colorado Department of Law  
1300 Broadway, 10<sup>th</sup> Floor  
Denver, CO 80203

**Re: Invitation for Pre-Rulemaking Feedback on Colorado Privacy Act**

Dear Attorney General Weiser:

The Alliance for Automotive Innovation (“Auto Innovators”) appreciates the opportunity to provide feedback to the Colorado Department of Law (“Department”) in response to its request for pre-rulemaking feedback on the Colorado Privacy Act (“CPA”). We certainly share your goals of promoting consumer rights, clarifying ambiguities, facilitating efficient and expeditious compliance, harmonizing with protections and obligations created in other frameworks, and allowing for innovation and look forward to continued engagement and collaboration with you on these important issues.

Auto Innovators is the singular, authoritative, and respected voice of the automotive industry. Focused on creating a safe and transformative path for personal mobility, Auto Innovators represents the manufacturers that produce nearly 98 percent of cars and light trucks sold in the United States. In addition to motor vehicle manufacturers, members of Auto Innovators include original equipment suppliers, technology companies, and others within the automotive ecosystem. The auto industry is the nation’s largest manufacturing sector, responsible for 10.3 million jobs and representing 5.5 percent of the country’s GDP.

Our member companies are committed to protecting consumer privacy 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*.<sup>1</sup> The Principles, which are enforceable by the Federal Trade Commission, represent a proactive and unified commitment by automakers to protect identifiable information collected through in-vehicle technologies. They distinguish the auto industry from other industries as one dedicated to safeguarding consumer privacy.

We appreciate the goal of creating a uniform and inclusive privacy law, but also recognize that consumer privacy is not a one-size-fits-all proposition. Comprehensive consumer privacy laws should account for the significant variation that exists among sectors and the implications that such variation has

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<sup>1</sup> <https://www.automotiveprivacy.com>

on consumer privacy. Our comments below highlight the unique impacts that the CPA and its implementing regulations may have on the auto industry and its ability to deliver a cleaner, safer, and smarter transportation future.

### **Universal Opt-Out**

Auto Innovators sees value in simplifying the opt-out process for consumers. However, since it is not clear how - or even if – a universal opt-out mechanism would work in or translate to the vehicle environment, it is premature for the Department to require that controllers accept a universal opt-out mechanism in all cases. Consumers can continue to effectively exercise their opt-out rights with respect to vehicle-generated data through other means.

### **Data Protection Assessments**

Auto Innovators appreciates CPA’s acknowledgement that not all processing of personal data presents a heightened risk of harm to a consumer and appropriately requires a Data Protection Assessment (“DPA”) only for the subset of processing activities that pose such a risk.

As the Department moves forward with establishing rules for the DPA, it should refrain from setting out or establishing overly prescriptive requirements as to the content of or process for conducting DPAs. Instead, controllers should be provided flexibility in implementing these DPA requirements so that they can be appropriately tailored to best and most effectively meet their unique needs.

In addition, we discourage the Department from specifying a regular cadence for the DPAs. If the Department seeks to establish a trigger for DPAs, the Department should consider requiring controllers to update them only when there is a material change in processing activities that is likely to have an impact on consumer privacy. Moreover, in determining when DPAs should be submitted to the Department, we encourage the Department to carefully balance the value of such submissions against the burden that such submissions may impose on controllers and the Department. We urge the Department to consider limiting DPA submissions to those requested by the Department in conjunction with a relevant investigation or inquiry.

Finally, we support any efforts to harmonize between the CPA’s DPA requirements and similar assessment requirements in other states. To the extent possible, Colorado should consider DPAs to be compliant when they have been conducted for and are compliant with related assessment requirements in another state.

### **Profiling and “Legal or Similarly Significant Effects”**

In §6-1-1303, CPA defines “profiling” broadly as “any form of automated processing of personal data to evaluate, analyze, or predict personal aspects concerning an identified or identifiable individual’s economic situation, health, personal preferences, interests, reliability, behavior, location, or movements.” As defined, this term could inadvertently capture some of the automated processing that underpins automated driving systems and other advanced vehicle safety systems.

For example, to respond to and navigate the driving environment, including working to avoid potential crashes, these next-generation systems often evaluate, analyze, or predict the location and movement of vehicles. In addition, auto companies are increasingly integrating health-related technologies into vehicles to help detect when a driver is having a medical crisis or is otherwise incapacitated and, as a result, is likely unable to maintain safe control of the vehicle.

Allowing consumers to opt-out of the data processing that enables these features or systems will disable or reduce their effectiveness and may have significant and unintended motor vehicle safety implications. For this reason, we strongly support the fact that CPA limits the scope of opt-out rights to processing for purposes of profiling in furtherance of decisions that produce legal or similarly significant effects and lays out a clear and reasonable definition of “legal or similarly significant effects.”

### **Protecting Coloradans in a National and Global Economy**

We welcome the Department’s recognition that the CPA and its rules protect Coloradans participating in national and global markets and must coexist with similar laws in other local, state, national, foreign, and international jurisdictions. To that end, we appreciate that the Department is seeking to identify areas where the CPA differs from other jurisdictions or emphasizes privacy interests more or differently.

Auto Innovators has identified three noteworthy areas in which the CPA diverges from other state privacy laws. First, CPA includes important provisions clarifying that the obligations in the law do not restrict a controller’s or processor’s ability to “conduct internal research to improve, repair, or develop products, services, or technology” or to “identify and repair technical errors that impair existing or intended functionality.” However, unlike comprehensive privacy laws in Virginia, Utah, Connecticut, and California, the CPA does not specifically include “effectuat[ing] a product recall” as an activity that should not be restricted by the obligations in the law. Auto companies take their safety-related responsibilities seriously, including obligations relating to product recalls. We must stress the importance of ensuring that recall-related activities be protected and preserved in any comprehensive privacy law. To clarify ambiguity, facilitate efficient and expeditious compliance, and foster harmonization, we urge the Department to confirm that product recalls are covered under either or both activities identified above.

Second, CPA also includes an important clarification that the law’s obligations do not restrict a controller’s or processor’s ability to “perform a contract to which the consumer is a party.” Among the states that have enacted comprehensive privacy laws, Colorado is the only one that does not explicitly identify “fulfilling the terms of a written warranty” in this context. For the same reasons identified above, we urge the Department to confirm that fulfilling the terms of a written warranty is covered under the contract exception.

Third, for purposes of determining what constitutes a “sale” of personal information subject to an opt-out right, enacted privacy laws in Virginia, Utah, and Connecticut all define “affiliate” as including legal entities that share common branding with another legal entity. As you are likely aware, nearly all auto companies sell their products through independent, but co-branded, dealerships. Auto companies and dealers must be able to share customer data with each other related to, for example, vehicle sales or leases and vehicle warranties. For this reason, solely with respect to defining a “sale” under the CPA, we urge the Department to consider a legal entity that shares common branding with another legal entity to be an affiliate of that entity.

### **Additional Topics**

Auto Innovators appreciates that some consumers may want access to personal data that has been collected about them. However, much of the data that is generated and collected from vehicles is from onboard computer systems or sensors and relates to the operation and function of the vehicle and its systems. This data is very technical in nature and is of little use to the average consumer. In addition, this information frequently contains detailed data elements related to each vehicle system and component over

the life of the vehicle. Since the average life of a vehicle is nearly 12 years, the volume of the data that may be responsive to a request for specific pieces of information would be vast and likely overwhelming for the consumer. For this reason, we urge the Department to allow for controllers to provide a requester with an accurate description or summary of operational data for a device owned or used by the requester. If an accurate description or summary is not permitted, we urge the Department to allow controllers to limit disclosure of such operational data to data generated within the 12-months prior to the request.

In addition, in most cases, an auto company does not know which consumer is driving a particular vehicle at a particular point in time. As a result, an auto company is generally unable to associate specific vehicle data with a person who was driving the vehicle when that vehicle data was generated. This poses significant, practical challenges for auto companies with respect to consumer requests for access to vehicle data and creates the potential for significant harm to consumers. For example, the sharing of vehicle geolocation data with a consumer who was not using the vehicle at the time the geolocation data was generated may create privacy or even safety risks (e.g., an abusive individual seeking information about where his spouse has driven a vehicle). For this reason, we urge the Department to specifically confirm that a controller is not required to provide access to specific pieces of personal information if it cannot determine that the personal information being requested relates specifically to that consumer or, in the case of data generated by a device, that the consumer was the consumer using the device when the requested personal data was generated.

Auto Innovators further acknowledges the interest in providing consumers with a right to correct inaccurate personal information. However, we continue to have concerns about how this right can be effectively exercised with respect to vehicle-generated data. Some of the data that is collected from vehicles is data generated by vehicle systems and components, including sensors. An accuracy challenge from a consumer related to this type of vehicle data is likely to create unnecessary and unresolvable challenges for vehicle or component manufacturers.

To that end, we suggest that the Department limit the right to request correction of personal information that has been provided directly by the consumer to the controller to receive services. We also recommend that the Department allow controllers to deny a consumer's request to correct personal information if the consumer fails to provide sufficient information to investigate the accuracy of the challenged personal information or when the controller has reason to believe that the personal information is accurate. Finally, the Department should set out reasonable limitations on the frequency with which a consumer can request that personal information be corrected. For example, the Department should allow controllers to deny a consumer's request to correct personal information if the consumer has requested that the same information be corrected multiple times in an abbreviated period of time. At a minimum, a controller's obligation to correct inaccurate information should be aligned with a controller's disclosure obligations under §6-1-1306(2)(c).

As a last point, as this important and consequential rulemaking gets underway, we request that the Department provide sufficient lead time between the finalization of the regulations and the effective date of the regulations. Our member companies take their compliance obligations seriously and need adequate time to align their processes and mechanisms with any new regulatory requirements. To that end, we request that the regulations be finalized at least 12 months before any new obligations or responsibilities take effect. In addition, to ensure sufficient input from stakeholders, we also request that any draft regulations be released for a public comment period of at least 90 days.

Consumer privacy remains critically important to Auto Innovators and its member companies. We appreciate the opportunity to provide this feedback and input and look forward to continuing to work with the Department on this and other privacy-related matters.

Sincerely,

A handwritten signature in black ink, appearing to read 'Hilary M. Cain', with a long horizontal stroke extending to the right.

Hilary M. Cain  
Vice President  
Technology, Innovation, & Mobility Policy

