

October 29, 2023

Mr. Bitters,

Thank you for the opportunity to provide comments on the proposed rules, Chapter 106, §§106.1 - 106.5, concerning the registration of data brokers, and how the implementation of these rules can positively impact the effectiveness of a state-wide data broker registry on Texans' data privacy rights.<sup>1</sup>

### **Background**

Texas Appleseed is a nonpartisan nonprofit focused on bringing about policies that are fair, just, and equitable for all Texans. Fueled by data, legal expertise, and a commitment to supporting vulnerable communities, our work has shaped hundreds of state and local policies and positively affected millions of Texans.

Through its Fair Financial Services Project, Texas Appleseed advocates for fair market practices across many financial services areas. Texas Appleseed has been a leader in working to implement strong data privacy protections for Texans, including enhancing the state's recently passed comprehensive data privacy law and supporting the state's efforts to implement a data broker registry.<sup>2</sup> Our data privacy work focuses on mitigating the risks of financial exploitation and technological abuse for vulnerable groups, particularly survivors of abuse. Overall, we work to ensure that data privacy standards, regulations, and policies include appropriate consumer protections and do not lead to negative financial outcomes for Texans.

### **Overview**

Texas Appleseed advocated for the passage of SB 2105 during the 88th Texas Legislature and we are providing comments to highlight the ways in which the implementation of this bill can be beneficial for vulnerable communities, such as survivors of abuse.<sup>3</sup> Our comments cover two key themes:

1. Specific improvements for the data broker registry, including:
  - a. Creating an additional, optional information field for data brokers to provide information about its opt-out policies,
  - b. Allowing users to view the full registration statement information, and

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<sup>1</sup> Texas Register, Chapter 106, §§106.1 - 106.5 (2023), <https://www.sos.state.tx.us/texreg/archive/September292023/Proposed%20Rules/1.ADMINISTRATION.html#3>

<sup>2</sup> Texas Business & Commerce Code § 541, <https://statutes.capitol.texas.gov/Docs/BC/htm/BC.509.htm>

<sup>3</sup> Texas Business and Commerce Code §509, <https://statutes.capitol.texas.gov/Docs/BC/htm/BC.509.htm>

- c. Providing users with the ability to download the full list of registered data brokers in Texas.
2. Accessibility and useability components to enhance user experience, including:
  - a. A plain language resource to educate Texans about the purpose and use of the registry,
  - b. Ensuring the data broker registry is easy to locate and routinely maintained, and
  - c. Adding clarity to the required notice.

It is crucial that the Office of the Secretary of State (Office) build effective useability and accessibility features into the data broker registry itself to ensure that Texas consumers truly benefit from the core goal of SB 2105: to allow Texans' to identify data brokers that handle their data and give them a tool to help control the collection and sale of their personal data. Our comments are informed by our data privacy knowledge and expertise, advocacy work that led to the passage of SB 2105, and on the outcomes of the implementation of the two currently existing broker registries in Vermont and California.

### **1. Specific Improvements for the Data Broker Registry**

Chapter 509, Business and Commerce Code (SB 2015, adopted in the 88th Legislature, Regular Session) requires the Office to oversee the registration of data brokers that handle Texans' data and establish and maintain a searchable registry of all registered data brokers in the state. Per Section 509.006, Business and Commerce Code, the data broker registry must include a search feature and the information provided on a data broker's registration statement. These components of the registry enable Texas consumers to browse the list of data brokers and learn more information about them. There are three additional components that are consistent with the explicit standards and intent of the law that would help to ensure that the data broker registry is useful for users:

- An optional opt-out information field,
- The ability to view the full registration statement, and
- A way for users to download the full list of all registered data brokers in Texas.

#### *Optional Opt-Out Information Field*

Adding an optional opt-out information field to the data broker registration statement is aligned with the letter and intent of SB 2105 and would provide substantial benefit to Texans. Though it is not specifically referenced in Section 509.005(b), Business and Commerce Code, it is included under Section 509.005(c), which permits a data broker, at its discretion, to provide additional information. It is also substantially similar to the requirement under Section

509.005(b)(5)(A), which mandates, as part of the registration statement, a statement detailing opt-out policies for the personal data of a known child. For example, an information field in the registration statement could read, “Detail opt-out policies for the personal data of a known child. You may also include information regarding other opt-out policies if available.”

Based on the existing standards in Texas law and practices in other states with data broker registries, adding an optional general opt-out information field would not create an added burden for data brokers. Similar information is required in other states with a data broker registry. For example, Vermont’s data broker registry *requires* data brokers to disclose if they allow consumers to opt-out of the data broker’s data collection, databases, or certain sales of data.<sup>4</sup> If a data broker allows for Vermont consumers to opt out of any of the above activities, the data broker is then required to submit information about how a consumer can access this request, what data collection activities the request applies to, and if the data broker allows consumers to authorize a third party to perform the opt-out on the consumer’s behalf.

In addition to being supported by the letter and intent of SB 2105, adding an optional opt-out information field to the data broker registration form would provide substantial benefit to Texans. This addition is crucial as a tool to protect the privacy and safety of Texans. It would make it easier, particularly for Texans vulnerable to financial abuse, to protect their data and therefore protect themselves from exploitation. The categories of information that data brokers collect on individuals are expansive and detailed. When acquired by bad actors, the vast trove of personal data can lead to invasive and detrimental abuses that cause severe harm. The digital age has enabled ingenious ways for abusers, fraudsters, and scammers to gain access to personally identifying information. For example, an abusive partner can purchase information about their former partner, a victim of domestic violence, from a data broker, such as their address or phone number, and use that information to perpetrate a number of harmful activities: stalking and harassing their victim, financially exploiting their victim, and even causing physical harm towards their victim. Another example is “grandparent scams,” which is when a fraudster takes advantage of a grandparent’s love and concern for their grandchildren to scam them out of money. In this technology-driven society, scammers can use the abundance of personal information about their targets that data brokers hold, thus bolstering their impersonations by making them more believable. As it currently stands, Texas is a leader in terms of the losses of over 60 victims of elder fraud, with losses reaching more than \$100 million.<sup>5</sup> Privacy is crucial for survivors of abuse, older adults, and all other communities vulnerable to abuse, to maintain their safety and overall wellbeing, and the ability for these

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<sup>4</sup> 9 V.S.A. § 2446(a)(3)(B)(i-iii) (2019), <https://legislature.vermont.gov/statutes/fullchapter/09/062>

<sup>5</sup> Federal Bureau of Investigation, “[2021 Elder Fraud Report](#)” (2022).

populations to opt-out of the data collection practices of data brokers can mean the difference between staying safe and suffering further harm.

#### *View Full Registration Statement*

As mentioned earlier, Section 509.005(b), Business and Commerce Code, requires data brokers to provide a broad range of information to the Office as part of the registration statement. The registration statement includes important information about a data broker, and per Section 509.006, Business and Commerce Code, the data broker registry must include this information. It is important that users of the online registry have the full ability to view all of the information included in the registration statement online without having to submit an open records request or otherwise pursue difficult and time-consuming processes.

For example, users of the Vermont data broker registry can view a data broker's registration statement by clicking on the data broker's name on the database.<sup>6</sup> California's registry has similar functionality, but with additional helpful information in the initial data provided prior to accessing the detailed registration through a provided link.<sup>7</sup> A user can view a data broker's name, email address, and website link. This is useful information, but it is essential for users to have the ability to view the full registration information provided by the data broker to truly benefit from the added transparency that the registry provides. Easy and streamlined access to the full registration information is an important feature that should be incorporated into Texas' data broker registry. It allows users to learn essential information about the entities that handle their data.

There are numerous reasons why giving users easy access to the full registration statement is extremely beneficial. If a user wants to learn about a data broker's opt-out policies without having to explore the complex privacy policies on a data broker's website, having access to the data broker's full submission on the registry allows the user to streamline this process. If a user wants to learn about the number of data breaches a specific data broker has experienced in the past year without conducting extensive internet searches, viewing the full submission allows a user to do so. If a user is unable to easily access all of the information submitted by a data broker during registration, then the usefulness of the registry falls short. We urge the Office to ensure that users can easily access the entire registration statement of a data broker.

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<sup>6</sup> Vermont Secretary of State, Data Broker Search (n.d.),  
<https://bizfilings.vermont.gov/online/DatabrokerInquire/DataBrokerSearch>

<sup>7</sup> State of California Department of Justice, Office of the Attorney General, Data Broker Registry (2023),  
<https://www.oag.ca.gov/data-brokers>

### *Download Full List of All Registered Data Brokers in Texas*

The data broker industry is unknown to most people, and yet these businesses collect massive amounts of personal data on individuals. It is important to ensure that public access to the registry system the Office implements reflects the unique nature of the data broker industry. The online system should allow users to view the entire list of registered data brokers in Texas without being required to know the specific names of data brokers, as most users will not know specific names of these entities.

Section 509.006(b)(1), Business and Commerce Code, requires the Office to maintain “a searchable, central registry of data brokers registered under Section 509.005.” Enabling easy download of the full registry is an invaluable feature of a “central registry.” Though the statute does not specifically require a download feature, making one available is aligned with the intent of SB 2105 and with the unique nature of the data broker industry. As an example, in California, users can search for a specific data broker and browse all registered data brokers on the website. Since there are over 500 registered data brokers, just being able to view them online is not always helpful. To make the online data more useful, there is an option to click a button and “Download CSV,” which compiles a full list of registered data brokers with data fields for each element of the registration form in a spreadsheet format. This is an important feature in support of transparency. It enables consumers to not only conduct an individual search of registered data brokers, but to also access the entire list of data brokers *without* having knowledge of the name of specific data brokers. For example, if a user is looking to opt-out of the data collection practices of all registered data brokers, unless that user knows the name of each registered data broker in advance, the user will not be able to successfully utilize the registry and accomplish their goal.

Additionally, by incorporating a download feature into the registry, users will be able to use the information on the registry for research purposes, such as to compare the number of registered data brokers in Texas to California, to find gaps in registration or gain a global perspective on the data broker industry, as well as for policy advocacy, such as to review the information and find ways to enhance protections for consumers when it comes to data brokers. We encourage the Office to implement an easy to use download feature to allow users to have full access to the list of registered data brokers in Texas, along with fields for the associated registration statement information required under Section 509.005, Business and Commerce Code.

## **2. Accessibility and Useability Components to Enhance User Experience**

In order for the data broker registry to serve its purpose and be useful for users, the Office must prioritize the accessibility and useability of the database. For accessibility, the design of the registry must be easily usable by people with disabilities. For useability, the registry must be

simple to locate on the Office's website and must be kept up to date. It is also essential that Texans know the data broker registry is available, understand its purpose, and know how to use it. Consistent with these guidelines, there are three specific components related to implementation of the law that would benefit Texans:

- A plain language resource to educate Texans about the purpose and use of the registry,
- Ensuring the data broker registry is easy to locate and routinely maintained, and
- Adding clarity to the required notice.

#### *Plain Language Resource to Educate Texans*

Most consumers are unaware that data brokers exist, let alone of the personal information data brokers have collected, the accuracy of that information, and how that information is being used. In addition, data privacy laws, privacy policies, and most privacy-related documents are extremely difficult for everyday consumers to fully comprehend. Providing simple, plain language resources to explain the purpose and uses of the registry will help Texans gain some control over their data.

A simple improvement the Office can incorporate into the data broker registry to address this gap is a plain language resource, such as language on the website where the registry is available and a downloadable PDF guide, that explains to users:

- What data brokers are,
- The purpose of the data broker registry,
- How users can access and navigate the registry, and
- What circumstances may warrant users accessing the registry.

The California data broker registry website offers a helpful starting point that can be improved upon. For example, at the top of California's data broker registry website, there is a short text explanation of California's data broker law.<sup>8</sup> In addition to California's registry website providing a brief statement about how state law requires data brokers to register, it includes a short, simple sentence explaining how to use the registry. The inclusion of a plain language and user-friendly guide will help users better understand the components of the data broker registry and how to use the information in the registry to protect their personal data.

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<sup>8</sup> *Id.*

### *Ensuring the Data Broker Registry is Simple to Locate and Routinely Maintained*

Texas' data broker registry cannot be effective if the website that houses the registry is difficult for consumers to locate, access, view, or otherwise navigate. It also cannot be effective if the information is out of date.

When comparing Vermont and California's data broker registries, a simple online search for "California data broker registry" or "Vermont data broker registry" reveals a top link that takes consumers directly to the state's online registry. Whereas California has a page dedicated solely to its registry, Vermont's website focuses mainly on the general data broker law that passed and only includes a link to its registry concealed under "Additional Resources."<sup>9</sup> This may seem like an insignificant difference between the two registries, but the process of finding the location of the registry can impact consumers' likelihood of accessing the registry. We urge the Office to consider the placement of the registry to ensure that the database is not buried under multiple links and is simple for users to locate on the Office's website.

Additionally, in 1 TAC §106.4, the Office has proposed the creation of a "statement of correction" form, which allows data brokers to correct any outdated information that was provided at the time of registration or renewal. This is a great tool that gives data brokers the opportunity to update any incorrect information, and the Office must ensure that the updated information from the statement of correction form is properly updated on the data broker registry so that users continue to have access to the most updated information. State-level data broker registries already place a heavy burden on consumers to locate, access, and individually opt-out of the collection and sale of their data, and the Office must consider the most effective way to publish and maintain their registry to ensure ease of use for consumers.

### *Adding Clarity to the Required Notice*

Section 509.004, Business and Commerce Code, requires the Office to develop language for data brokers to post a conspicuous notice on their website and mobile applications. The notice must include language that identifies a data broker as a data broker and that is readily accessible to users, including those with disabilities. In the proposed rules, the Office has developed language that is in all capitals, bolded, and underlined, which raises serious concerns about the ability for users with disabilities to effectively read and understand this required notice. The Website Accessibility Initiative, centered on promoting online accessibility for individuals with disabilities, outlines key "Accessibility Principles" for websites, web

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<sup>9</sup> Vermont Secretary of State, Business Services Division, Data Brokers (2023), <https://sos.vermont.gov/corporations/other-services/data-brokers/>

applications, browsers, and other online tools.<sup>10</sup> The Accessibility Principles cover numerous accessibility components for websites, including ensuring that “text is readable and understandable” for users. This can look like prioritizing accessible font formatting, which includes font style, size, and characterizations. For example, the Office can use familiar fonts, such as Arial or Calibri, to reduce the reading load on a user’s eyes. The Office can also avoid using all capital letters and excessive italics or underlines to reduce the strain on a user’s eyes as well, which will make users more likely to take in the information and understand its meaning. The Office can utilize this important resource to ensure that the format of the required notices is truly accessible for users with disabilities.

Additionally, the rules are unclear as to where the required notices must be published on the data brokers website and mobile application. To maintain consistency, the Office could require data brokers to, for example, post the required notice in the same location and matter as the data broker’s privacy notice, or post a direct link in a prominent location on the website, such as the home page, with an easily identifiable title (e.g., “data broker disclosure”). This way, users will easily and consistently be able to locate the required notice. It would also be beneficial for the Office to add a website link to the data broker registry at the end of each notice, which can guide users that have already located the required notice on a data broker’s website but may be unaware of the existence of the data broker registry itself.

## **Conclusion**

The Office has the ability to ensure that the implementation of the data broker registry enhances Texans’ ability to gain greater control over how their data is handled by data brokers.

Texas Appleseed encourages the Office to incorporate key registry-specific changes to enhance the effectiveness and functionality of the registry:

- Create an additional, optional information field for data brokers to provide information about its opt-out policies,
- Allow users to view the full registration statement information, and
- Provide users with the ability to download the full list of registered data brokers in Texas.

It is also necessary for the Office to prioritize the accessibility and usability of the registry:

- A plain language resource to educate Texans about the purpose and use of the registry,

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<sup>10</sup> W3C Web Accessibility Initiative, Accessibility Principles (2019), (<https://www.w3.org/WAI/fundamentals/accessibility-principles/#readable>)



- Ensuring the data broker registry is easy to locate and routinely maintained, and
- Adding clarity to the required notice.

Thank you again for the opportunity to provide comments on the proposed rules for the implementation of SB 2105. Texas Appleseed encourages the Office to strongly consider ways to improve the functionality, accessibility, and usability of the data broker registry.

Sincerely,



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