

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

HOUSE BILL NO. 1103
(Representative Sveen)
(At the request of the Department of Transportation)

AN ACT to provide for the privacy of driver and motor vehicle records; to amend and reenact section 39-02-05 of the North Dakota Century Code, relating to records of the department; to provide a penalty; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Department" means the department of transportation, or an authorized agent or contractor of the department responsible for compiling and maintaining motor vehicle records.
2. "Disclose" means to engage in any practice or conduct to make available and make known personal information contained in a motor vehicle record about a person to any other person by any means of communication.
3. "Individual record" means a motor vehicle record containing personal information about a designated person who is the subject of the record as identified in a request.
4. "Motor vehicle record" means any record that pertains to a motor vehicle operator's license or permit, motor vehicle registration, motor vehicle title, or identification document issued by the department, or other state or local agency authorized to issue any of such forms of credentials. A record includes all books, papers, photographs, photostats, cards, films, tapes, recordings, electronic data, printouts or other documentary materials regardless of physical form or characteristics.
5. "Person" does not include an agency of this state.
6. "Personal information" means information that identifies a person, including an individual's photograph or computerized image, social security number, driver identification number, name, address, telephone number, and medical or disability information. The term does not include the five-digit zip code of an address, information on vehicular accidents, driving or equipment-related violations, and operator's license or registration status.

SECTION 2. Disclosure and use of personal information from department records prohibited. Notwithstanding any other provision of law, except as provided in sections 3, 4, and 5 of this Act, the department may not disclose personal information about any person obtained by the department in connection with a motor vehicle record.

SECTION 3. Required disclosures. Personal information referred to in section 2 of this Act must be disclosed for use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles and dealers by motor vehicle manufacturers; and removal of nonowner records from the original owner records of motor vehicle manufacturers in accordance with federal law.

SECTION 4. Disclosure with consent. Personal information referred to in section 2 of this Act may be disclosed to any requester, if the requester demonstrates in the form and manner prescribed by the department that the requester has obtained the written consent of the person who is the subject of the information.

SECTION 5. Permitted disclosures. The department may disclose personal information referred to in section 2 of this Act to any person, on proof of the identity of the person requesting a record and representation by the requester that the use of the personal information will be strictly limited to one or more of the following:

1. For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person acting on behalf of a government agency in carrying out its functions.
2. For use in connection with matters of motor vehicles or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts, and dealers; motor vehicle market research activities, including survey research; and removal of nonowner records from the original owner records of motor vehicle manufacturers.
3. For use in the normal course of business by a legitimate business or its agents, employees, or contractors:
 - a. To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and
 - b. If the information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual.
4. For use in connection with any proceeding in any court or government agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of any court.
5. For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.
6. For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating, or underwriting.
7. For use in providing notice to the owner or lienholder of a towed or impounded vehicle.
8. For use by any licensed private investigative agency or licensed security service for any purpose permitted under this section.
9. For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license which is required under the Commercial Motor Vehicle Safety Act of 1986 [title XII of Pub. L. 99-570].
10. For use in connection with the operation of private toll transportation facilities.
11. For any use specifically authorized by law that is related to the operation of a motor vehicle or public safety.
12. For any other use in response to requests for individual motor vehicle records if the department has provided in a clear and conspicuous manner on forms for issuance or renewal of operator's permits, titles, registrations, or identification cards, notice that personal information collected by the department may be disclosed to any person, and the department has provided in a clear and conspicuous manner on the forms an opportunity to prohibit disclosure.
13. For bulk distribution for surveys, marketing, or solicitations if the motor vehicle department has implemented methods and procedures to ensure that:

- a. Individuals are provided an opportunity, in a clear and conspicuous manner, to prohibit those uses; and
- b. The information disclosed may not be used for surveys, marketing, or solicitations directed at the individuals choosing to prohibit those uses.

SECTION 6. Fees. Disclosure of personal information required or permitted under sections 3, 4, and 5 of this Act is subject to payment by the requesting person to the department of all fees for the information required by law, or the terms of any contract with the requesting person, on the terms for payment as may be required or agreed.

SECTION 7. Additional conditions. Before the disclosure of personal information under sections 3, 4, and 5 of this Act, the department may require reasonable assurance concerning the identity of the requesting person, the use to be only as authorized, and the consent of the person who is the subject of the information to be obtained. These conditions may include the making and filing of a written application in a form and containing information and certification requirements as the department may prescribe.

SECTION 8. Resale or redisclosure.

1. An authorized recipient of personal information may resell or redisclose the information for any use permitted under section 5.
2. The department shall require any authorized recipient who resells or rediscloses personal information to maintain for a period of not less than five years records as to the person receiving the information and the permitted use for which it was obtained, and to make these records available for inspection by the department, upon request.

SECTION 9. Regulations and waiver procedure. Upon receiving a request for personal information that is not subject to disclosure in accordance with the exception provisions of sections 3, 4, and 5, the department may mail a copy of the request to each individual who is the subject of the information, informing the individual of the request, together with a statement to the effect that disclosure is prohibited and will not be made unless the individual affirmatively elects to waive the individual's rights to privacy under sections 1 through 10 of this Act.

SECTION 10. Penalty for false representation. Any person requesting the disclosure of personal information from department records who misrepresents that person's identity or makes a false statement to the department on any application required to be submitted pursuant to sections 1 through 10 of this Act is guilty of a class A misdemeanor.

SECTION 11. AMENDMENT. Section 39-02-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-02-05. Records of the department open to public inspection. All Except as provided by sections 1 through 10 of this Act, all registration and license records in the office of the department must be public records and must be open to inspection by the public during business hours. The director shall charge a uniform fee, not to exceed three dollars, for each item of information furnished to any person concerning a specific motor vehicle. However, such charges may not be assessed to a person requesting information concerning a motor vehicle of which he is the owner, nor may such charges apply to law enforcement officials requesting motor vehicle information in their official capacity. All fees received under the provisions of this section must be credited to the motor vehicle registration fund.

SECTION 12. EXPIRATION DATE. This Act becomes ineffective on the date the attorney general certifies to the legislative council that the Federal Driver's Privacy Protection Act of 1994 [Pub. L. 103-322; 108 Stat. 2099; 18 USC 2721] has been declared unconstitutional by the United States Supreme Court or is otherwise void.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1103.

House Vote: Yeas 94 Nays 1 Absent 2

Senate Vote: Yeas 44 Nays 0 Absent 5

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,

at _____ o'clock _____ M.

Secretary of State