



MEMO

TO Interested Media Outlets

FROM Bernie Rhodes

DATE August 19, 2023

SUBJECT Kansas and U.S. law on accessing drivers' records

Kansas law defines “**motor vehicle records**” as including “any record that pertains to a motor vehicle drivers’ license.” KSA 71-2012(a)(3).

The same law states that “**All motor vehicle records shall be subject to the provisions of the open records act**, except” (a) “records which relate to the physical or mental condition of any person,” (b) “records which have been expunged,” or (c) “photographs [on] drivers’ licenses.” KSA 74-2012(a)(1) & (b).

The U.S. Driver’s Privacy Protection Act defines “**motor vehicle record**” as including “any record that pertains to a motor vehicle operator’s permit.” 18 U.S.C. § 2725(1).

The Act provides that “It shall be unlawful for any person knowingly to obtain or disclose **personal information**, from a motor vehicle record, for any use not permitted under section 2721(b) of this title.” 18 U.S.C. § 2722(a).

The Act states that “**personal information**” “**does not include information on vehicular accidents, driving violations, and drivers’ status.**” 18 U.S.C. § 2725(3).

Information from a driver’s record that shows the driver’s license is suspended is not protected “**personal information**”. *Shadwell v. Clark*, 2009 WL 2970515, *3 (W.D. Va. Sept. 16, 2009).

The Act also provides that “Personal information ... may be disclosed ... [f]or 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.” 18 U.S.C. § 2721(b)(5).

In the analogous area of birth and death records, “**reporters when investigating stories have a ‘legitimate research purpose’** ... and are therefore to be allowed access to the vital records.” *Campbell & Assoc. v. Sharma*, No. 884-0076, at 22 St. Louis Cir. Ct. (Jan. 25, 1989).

74-2012. Division of vehicles, records; disclosure; fees. (a) (1) All motor vehicle records shall be subject to the provisions of the open records act, except as otherwise provided under the provisions of this section and by K.S.A. [65-2422d](#) and [74-2022](#), and amendments thereto.

(2) Nothing in this section shall prevent the transmittal of motor vehicle records for the purpose of processing voter registration applications.

(3) For the purpose of this section, "motor vehicle records" means any record that pertains to a motor vehicle drivers' license, motor vehicle certificate of title, motor vehicle registration or identification card issued by the division of vehicles.

(b) All motor vehicle records which relate to the physical or mental condition of any person, have been expunged or are photographs or digital images maintained in connection with the issuance of drivers' licenses shall be confidential and shall not be disclosed except in accordance with a proper judicial order or as otherwise more specifically provided in this section or by other law. Photographs or digital images maintained by the division of vehicles in connection with the issuance of drivers' licenses may be disclosed to any federal, state or local agency, including any court or law enforcement agency, to assist such agency in carrying out the functions required of such governmental agency. In January of each year the division shall report to the house committee on veterans, military and homeland security regarding the utilization of the provisions of this subsection. Motor vehicle records relating to diversion agreements for the purposes of K.S.A. [8-1567](#), [12-4415](#) and [22-2908](#), and amendments thereto, shall be confidential and shall not be disclosed except in accordance with a proper judicial order or by direct computer access to:

(1) A city, county or district attorney, for the purpose of determining a person's eligibility for diversion or to determine the proper charge for a violation of K.S.A. [8-2,144](#) or [8-1567](#), and amendments thereto, or any ordinance of a city or resolution of a county in this state which prohibits any acts prohibited by those statutes;

(2) a municipal or district court, for the purpose of using the record in connection with any matter before the court;

(3) a law enforcement agency, for the purpose of supplying the record to a person authorized to obtain it under paragraph (1) or (2); or

(4) an employer when a person is required to retain a commercial driver's license due to the nature of such person's employment.

(c) Lists of persons' names and addresses contained in or derived from motor vehicle records shall not be sold, given or received for the purposes prohibited by K.S.A. [45-230](#), and amendments thereto, except that:

(1) The director of vehicles may provide to a requesting party, and a requesting party may receive, such a list and accompanying information from motor vehicle records upon written certification that the requesting party shall use the list solely for the purpose of:

(A) Assisting the selective service system in the maintenance of a list of persons 18 to 26 years of age in this state as required under the provisions of section 3 of the federal military selective service act;

(B) assisting businesses with the verification or reporting of information derived from the title and registration records of the division to prepare and assemble vehicle history reports, except that such vehicle history reports shall not include the names or addresses of any current or previous owners;

(C) assisting an employer or an employer's authorized agent in monitoring the driving record of the employees required to drive in the course of employment to ensure driver behavior, performance or safety;

(D) assisting the Kansas commission on veterans affairs office in notifying veterans of the facilities, benefits and services available to veterans; or

(E) any other purpose authorized by the driver's privacy protection act, 18 U.S.C. § 2721, as it existed on January 1, 2018.

(2) Any law enforcement agency of this state which has access to motor vehicle records may furnish to a requesting party, and a requesting party may receive, such a list and accompanying information from such records upon written certification that the requesting party shall use the list solely for the purpose of assisting an insurer authorized to do business in this state, or the insurer's authorized agent, in processing an application for, or renewal or cancellation of, a motor vehicle liability insurance policy.

(d) If a law enforcement agency of this state furnishes information to a requesting party pursuant to subsection (c)(2), the law enforcement agency shall charge the fee prescribed by the secretary of revenue pursuant to K.S.A. [74-2022](#), and amendments thereto, for any copies furnished and may charge an additional fee to be retained by the law enforcement agency to cover its cost of providing such copies. The fee prescribed pursuant to K.S.A. [74-2022](#), and amendments thereto, shall be paid monthly to the secretary of revenue and upon receipt thereof shall be deposited in

the state treasury to the credit of the electronic databases fee fund, except for the \$1 of the fee for each record required to be credited to the highway patrol training center fund under subsection (f).

(e) The secretary of revenue, the secretary's agents or employees, the director of vehicles or the director's agents or employees shall not be liable for damages caused by any negligent or wrongful act or omission of a law enforcement agency in furnishing any information obtained from motor vehicle records.

(f) A fee in an amount fixed by the secretary of revenue pursuant to K.S.A. [74-2022](#), and amendments thereto, of not less than \$2 for each full or partial motor vehicle record shall be charged by the division, except that the director may charge a lesser fee pursuant to a contract between the secretary of revenue and any person to whom the director is authorized to furnish information under subsection (c)(1), and such fee shall not be less than the cost of production or reproduction of any full or partial motor vehicle record requested. One dollar shall be credited to the highway patrol training center fund for each motor vehicle record provided by the division of vehicles, except for fees charged:

(1) Pursuant to a contract for motor vehicle records authorized by this subsection pertaining to motor vehicle titles or motor vehicle registrations; or

(2) for motor vehicle records authorized for disclosure pursuant to subsection (c)(1)(E) for the purposes of:

(A) Assisting an insurer authorized to do business in this state, or the insurer's authorized agent, in conducting antifraud activities; or

(B) assisting any federal, state or local agency, including any court or law enforcement agency, or any private person acting on behalf of such agencies, in carrying out the functions required of such governmental agency.

(g) The secretary of revenue may adopt such rules and regulations as are necessary to implement the provisions of this section.

History: L. 1929, ch. 81, § 4; L. 1945, ch. 88, § 2; L. 1957, ch. 425, § 1; L. 1961, ch. 381, § 1; L. 1972, ch. 286, § 1; L. 1975, ch. 400, § 1; L. 1978, ch. 347, § 16; L. 1981, ch. 301, § 1; L. 1984, ch. 282, § 1; L. 1985, ch. 79, § 6; L. 1989, ch. 38, § 48; L. 1991, ch. 36, § 22; L. 1992, ch. 2, § 1; L. 1994, ch. 25, § 1; L. 1994, ch. 299, § 4; L. 1995, ch. 62, § 1; L. 1996, ch. 260, § 11; L. 1999, ch. 125, § 20; L. 2001, ch. 74, § 1; L. 2002, ch. 92, § 1; L. 2003, ch. 126, § 3; L. 2005, ch. 128, § 1; L. 2006, ch. 186, § 8; L. 2007, ch. 160, § 14; L. 2007, ch. 195, § 37; L. 2011, ch. 105, § 31; L. 2012, ch. 172, § 37; L. 2013, ch. 74, § 3; L. 2014, ch. 83, § 33; L. 2018, ch. 106, § 34; L. 2019, ch. 45, § 1; July 1.



Kansas Department of Revenue

18 U.S.C. § 2721 *et seq.*

Driver's Privacy Protection Act of 1994, as amended

18 U.S.C. § 2721. Prohibition on release and use of certain personal information from State motor vehicle records

(a) **In general.**--A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

(1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section; or

(2) highly restricted personal information, as defined in 18 U.S.C. 2725(4), about any individual obtained by the department in connection with a motor vehicle record, without the express consent of the person to whom such information applies, except uses permitted in subsections (b)(1), (b)(4), (b)(6), and (b)(9): *Provided*, That subsection (a)(2) shall not in any way affect the use of organ donation information on an individual's driver's license or affect the administration of organ donation initiatives in the States.

(b) **Permissible uses.**--**Personal information** referred to in subsection (a) shall 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 non-owner records from the original owner records of motor vehicle manufacturers to carry out the purposes of titles I and IV of the Anti Car Theft Act of 1992, the Automobile Information Disclosure Act (15 U.S.C. 1231 et seq.), the Clean Air Act (42 U.S.C. 7401 et seq.), and chapters 301, 305, and 321-331 of title 49, and, subject to subsection (a)(2), **may be disclosed** as follows:

(1) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions.

(2) 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, motor vehicle parts and dealers; motor vehicle market research activities, including survey research; and removal of non-owner 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, but only—

(A) to verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

(B) if such 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 civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or 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 a Federal, State, or local 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 owners of towed or impounded vehicles.

(8) For use by any licensed private investigative agency or licensed security service for any purpose permitted under this subsection.

(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 that is required under chapter 313 of title 49.

(10) For use in connection with the operation of private toll transportation facilities.

(11) For any other use in response to requests for individual motor vehicle records if the State has obtained the express consent of the person to whom such personal information pertains.

(12) For bulk distribution for surveys, marketing or solicitations if the State has obtained the express consent of the person to whom such personal information pertains.

(13) For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains.

(14) For any other use specifically authorized under the law of the State that holds the record, if such use is related to the operation of a motor vehicle or public safety.

(c) **Resale or redisclosure.**--An authorized recipient

of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b) (but not for uses under subsection (b) (11) or (12)). An authorized recipient under subsection (b)(11) may resell or redisclose personal information for any purpose. An authorized recipient under subsection (b)(12) may resell or redisclose personal information pursuant to subsection (b)(12). Any authorized recipient (except a recipient under subsection (b) (11)) that resells or rediscloses personal information covered by this chapter must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request.

(d) Waiver procedures.--A State motor vehicle department may establish and carry out procedures under which the department or its agents, upon receiving a request for personal information that does not fall within one of the exceptions in subsection (b), may mail a copy of the request to the individual about whom the information was requested, informing such individual of the request, together with a statement to the effect that the information will not be released unless the individual waives such individual's right to privacy under this section.

(e) Prohibition on conditions.--No State may condition or burden in any way the issuance of an individual's motor vehicle record as defined in 18 U.S.C. 2725(1) to obtain express consent. Nothing in this paragraph shall be construed to prohibit a State from charging an administrative fee for issuance of a motor vehicle record.

18 U.S.C. § 2722. Additional unlawful acts

(a) Procurement for unlawful purpose.--It shall be unlawful for any person knowingly to obtain or disclose personal information, from a motor vehicle record, for any use not permitted under section 2721(b) of this title.

(b) False representation.--It shall be unlawful for any person to make false representation to obtain any personal information from an individual's motor vehicle record.

18 U.S.C. § 2723. Penalties

(a) Criminal fine.--A person who knowingly violates this chapter shall be fined under this title.

(b) Violations by State department of motor vehicles.--Any State department of motor vehicles that has a policy or practice of substantial noncompliance with this chapter shall be subject to a civil penalty imposed by the Attorney General of not more than \$5,000 a day for each day of substantial noncompliance.

18 U.S.C. § 2724. Civil action

(a) Cause of action.--A person who knowingly obtains, discloses or uses personal information, from a motor vehicle record, for a purpose not permitted under this chapter shall be liable to the individual to whom the information pertains, who may bring a civil action in a United States district court.

(b) Remedies.--The court may award—

- (1) actual damages, but not less than liquidated damages in the amount of \$2,500;
- (2) punitive damages upon proof of willful or reckless disregard of the law;
- (3) reasonable attorneys' fees and other litigation costs reasonably incurred; and
- (4) such other preliminary and equitable relief as the court determines to be appropriate.

18 U.S.C. § 2725. Definitions

In this chapter—

(1) "motor vehicle record" means any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles;

(2) "person" means an individual, organization or entity, but does not include a State or agency thereof;

(3) "personal information" means information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver's status.

(4) "highly restricted personal information" means an individual's photograph or image, social security number, medical or disability information; and

(5) "express consent" means consent in writing, including consent conveyed electronically that bears an electronic signature as defined in section 106(5) of Public Law 106-229.