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MOTOR VEHICLES AND TRAFFIC

Drivers' Licenses: Comply with the Provisions of the Federal Driver's Privacy Protection Act; Provide Strict Guidelines for the Release of Personal Information from Drivers' Licenses and Other Records of the Department of Public Safety

CODE SECTIONS: O.C.G.A §§ 40-5-1 to -2 (amended), -105 (new)
BILL NUMBER: HB 587
ACT NUMBER: 442
GEORGIA LAWS: 1997 Ga. Laws 1446
SUMMARY: The Act implements provisions of the federal Driver's Privacy Protection Act. The Act goes beyond the provisions of the federal Act in many respects, however. It lays strict guidelines for the release of information from drivers' licenses and other records held by the Department of Public Safety, delineating the parties to whom this information can be released and under what circumstances. The Act also ensures that records of such releases are maintained by the Department and made available to the individual who is the subject of the release.
EFFECTIVE DATE: April 29, 1997¹

History

In 1989, actress Rebecca Schaeffer was murdered by an obsessed fan who obtained her address from a private investigator, who had uncovered this information through her motor vehicle records held by the State of California.² At the time of this incident, a California statute clearly stated that motor vehicle registration records "shall be open to public inspection."³ In response to this and similar incidents, Senator Barbara Boxer, of California, proposed the Driver's Privacy Protection Act of 1994⁴ to the U.S. Senate.⁵ The purpose of this new

1. The Act became effective upon approval by the Governor.

2. See Sandra B. Peterson, *Your Life as an Open Book: Has Technology Rendered Personal Privacy Virtually Obsolete?*, 48 FED. COMM. L. REV. 163, 182 (1995).

3. CAL. VEH. CODE § 1808 (West 1995). The only registration records exempt from full disclosure in California were the records of certain public officials, law enforcement officers, and similar personnel due to fears for their safety (and then only if that person specifically requested nondisclosure). See *id.* § 1808.4.

4. Codified at 18 U.S.C. §§ 2721-2725 (1994).

5. See Peterson, *supra* note 2, at 182.

law was to prevent stalkers and anti-abortion groups from using drivers' records to track down individuals⁶ by "making it a crime for state motor vehicle offices to release certain information about a licensee without a legitimate purpose."⁷ Having passed both houses of Congress, the federal Act was signed into law by President Bill Clinton on September 13, 1994 as part of the Crime Bill.⁸

Even before this new federal measure, several states—Kansas, Maryland, Michigan, New Hampshire, New York, and Utah—had considered or passed bills that would close motor vehicle records.⁹ Moreover, the new federal Act shared many features of similar laws passed by the European Union.¹⁰ However, the enactment of the federal Act was a watershed event for all American states, for it gave them three years to prepare their own regulations that would "allow drivers to opt out of having personal information released."¹¹ A failure to do so after the three-year deadline would result in the accrual of civil penalties upon the states of up to \$5000 per day.¹²

The federal Driver's Privacy Protection Act requires states to prevent access to drivers' records containing "personal information," which it defines as any "information that identifies an individual," including name, address, phone number, photographs, and social security number.¹³ Exceptions are permitted only for specific types of requestors such as courts, insurance companies, and researchers producing statistical reports.¹⁴ Before the ink was dry on the federal Act, commentators were criticizing it in droves. Some argued that it had little bite and contained many loopholes, with one law professor noting that it "will make it only slightly more difficult to connect vehicle registration numbers with individuals."¹⁵ Others have

6. See Jane E. Kirtley, *The EU Data Protection Directive and the First Amendment: Why a "Press Exemption" Won't Work*, 80 IOWA L. REV. 639, 644 (1995); *Bill Would Close Access to Drivers' Records*, 18 NEWS MEDIA & THE LAW 9, 9-10 (1994).

7. Judith B. Prowda, *Privacy and Security of Data*, 64 FORDHAM L. REV. 738, 754 (1995).

8. See Kirtley, *supra* note 6, at 641.

9. See *id.* at 644. For a comprehensive summary of the state statutes affecting privacy of vehicle and driver records at about the same time the federal Driver's Privacy Protection Act of 1994 was passed, see Dorothy J. Glancy, *Privacy and Intelligent Transportation Technology*, 11 SANTA CLARA COMPUTER & HIGH TECH. L.J. 151, 195-97 (1995).

10. See Kirtley, *supra* note 6, at 641.

11. Prowda, *supra* note 7, at 754.

12. See 18 U.S.C. § 2723 (1994).

13. Kirtley, *supra* note 6, at 641 (citing 18 U.S.C. § 2725 (1994)).

14. See *id.* (citing 18 U.S.C. § 2721 (1994)).

15. Glancy, *supra* note 9, at 181; see Peterson, *supra* note 2, at 182. As a specific example, Peterson notes that the federal Act contains an exemption for private investigators, such as the one who obtained Rebecca Schaeffer's address. *Id.*

characterized it as "shortsighted and reactionary,"¹⁶ or have noted that it raises significant First Amendment problems and therefore may be unconstitutional.¹⁷

A second development concerning privacy of drivers' records faced the 1997 session of the Georgia General Assembly when it convened. During the 1996 session, the General Assembly, at the urging of the Department of Public Safety (DPS), passed a new law that required the fingerprinting of applicants for a driver's license in Georgia as an anti-fraud measure.¹⁸ Although several other states—California, Colorado, Hawaii, and Texas—had similar laws,¹⁹ the new requirement proved to be extremely controversial.²⁰ Opponents argued that the fingerprinting invaded privacy.²¹ Legislative proposals to repeal the fingerprinting law quickly appeared in the 1997 session of the General Assembly, supported by groups as diverse as the Christian Coalition and the American Civil Liberties Union, but were ultimately defeated.²² To ease the continuing worries of these opponents, however, an opportunity for compromise suddenly appeared when the General Assembly was faced with enacting a statute that would satisfy the federal Driver's Privacy Protection Act.²³ The DPS, which maintains all drivers' licenses and other records in Georgia, drafted HB 587 with all of the above considerations in mind and approached House Majority Leader Larry Walker to sponsor the bill.²⁴ At the same time, the DPS believed that there was an even greater concern in Georgia for privacy of drivers' records and sought to tighten the requirements of the federal law.²⁵ The drafters of the bill also had to ensure that the new

16. Peterson, *supra* note 2, at 182.

17. See Kirtley, *supra* note 6, at 644, 646.

18. See Telephone Interview with Meredith Melvin, Legislative Liaison for the Department of Public Safety (Apr. 21, 1997) [hereinafter Melvin Interview]. 1996 Ga. Laws 1250, § 4, at 1251-52 (codified at O.C.G.A. 40-5-28 (Supp. 1996)) (Fingerprinting Act of 1996).

19. See Coalition for a Reliable Driver's License, *Ten Misconceptions About Requiring a Finger Image Prior to Receiving a Driver's License or Identicard* (available in Georgia State University College of Law library).

20. See, e.g., *Editorials Ease into Driver Fingerprinting Policy*, ATLANTA J. & CONST., Dec. 10, 1996, at A18; *To Some a Safeguard, To Others a Threat*, ATLANTA J. & CONST., Feb. 9, 1997, at J11 (Gwinnett Extra section, public opinion questions).

21. See Sandra Eckstein, *Foes of Fingerprinting Expected to Push a Few Hot Buttons*, ATLANTA J. & CONST., Feb. 10, 1997, at B6.

22. See Kathey Alexander & Lucy Soto, *Heated Session Could Be Fuse for Political Fireworks in '98*, ATLANTA J. & CONST., Mar. 30, 1997, at C4.

23. See Peter Mantius & Kathey Alexander, *Budget Negotiations Stall Over Bailout of Paralympics*, ATLANTA J. & CONST., Mar. 2, 1997, at D8; *Editorial: Compromise on Fingerprints*, ATLANTA J. & CONST., Feb. 27, 1997, at A14.

24. See Telephone Interview with Rep. Larry Walker, House District No. 141 (Apr. 21, 1997) [hereinafter Walker Interview]; Melvin Interview, *supra* note 18.

25. See Melvin Interview, *supra* note 18.

restrictions would not hamper legitimate investigations into unlawful activities.²⁶

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Recognizing the controversial nature of the fingerprinting issue, Representative Walker approached House Minority Leader Bob Irvin in an effort to get bi-partisan sponsorship of the bill.²⁷ Representative Irvin agreed to be a sponsor himself, and several other members of the House in both parties added their names to the bill as an attempt to show the importance of the matter.²⁸ The bill was referred to the House Motor Vehicles Committee, chaired by Representative Bobby Parham.²⁹ The Committee recommended passage of the bill, but substituted its own version that allowed greater release of personal information from drivers' records to judges, prosecutors, and law enforcement agencies.³⁰ The DPS had argued for this change, realizing as a law enforcement agency itself that the earlier language might unnecessarily restrict the release of information to these officials in critical cases such as child abductions.³¹ The Committee itself had similar concerns. According to Representative Parham, the discussion of the substitute bill centered around the then recent Centennial Olympic Park bombing.³² The Committee believed that the bill, as originally drafted, might have limited the ability of law enforcement personnel when conducting investigations of such incidents by restricting access to photographs and other identifying information on potential suspects.³³ The substitute version was passed on to the entire House.³⁴ Despite the DPS and Committee concerns, the House amended the substitute, essentially reinstating the earlier restrictions on the information that could be released to the officials covered.³⁵

Once passed to the Senate, HB 587 went through similar scrutiny. The bill was referred to the Senate Public Safety Committee, chaired by

26. *See id.*

27. *See* Walker Interview, *supra* note 24.

28. *See id.*; HB 587, as introduced, 1997 Ga. Gen. Assem.

29. *See* Final Composite Status Sheet, Mar. 28, 1997.

30. The earlier version of the bill allowed release of only the following items to these officials: name, address, driver identification number, and medical or disability information. *Compare* HB 587, as introduced, 1997 Ga. Gen. Assem., *with* HB 587 (HCS), 1997 Ga. Gen. Assem.

31. *See* Melvin Interview, *supra* note 18.

32. Telephone Interview with Rep. Bobby Parham, House District No. 122 (Apr. 22, 1997) [hereinafter Parham Interview].

33. *See id.*

34. *See* Final Composite Status Sheet, Mar. 28, 1997.

35. *See id.* *Compare* HB 587 (HCS), 1997 Ga. Gen. Assem., *with* HB 587 (SCS), 1997 Ga. Gen. Assem.

Senator Rooney Bowen.³⁶ By this time, other potential problems with the language of the bill had surfaced. Credit reporting companies such as Equifax had argued to the DPS that the bill as it stood could potentially put them out of business, for it would cut off their access to personal information vital to their verification procedures.³⁷ At the same time, the Public Safety Committee was concerned about the problem with fraud against businesses by people who put false information on applications of various kinds.³⁸ According to Senator Bowen, the bill would have made it impossible for legitimate businesses to discover this fraud by verifying information from drivers' records.³⁹ Thus, the Committee substitute added a subsection that would allow businesses to access drivers' records to prevent fraud against them, limiting their access to "name, address, and driver identification number" (and specifically denying access to "photographs, fingerprints, computer images, or medical or disability information").⁴⁰ This addition was eventually retained by the Senate and, in turn, by the House when the bill was returned to that body.⁴¹

The primary purpose of the Act remains protecting the privacy of Georgians.⁴² In fact, it contains stricter provisions on access to drivers' records than its federal predecessor.⁴³ The Act amends chapter 5 of title 40 of the Code in several ways. First, tracking the federal provisions, it defines "personal information" as "any information that identifies a person" including photograph, social security number, driver identification number, name, address, telephone number, and medical or disability information.⁴⁴ The Act proceeds farther than the federal law, however, by including fingerprints and computerized images in the category of personal information.⁴⁵ The Act also restricts the disclosure of personal information from the drivers' records held by the DPS.⁴⁶ It does so by listing the only circumstances under which this personal information can be released, as follows:

36. See Final Composite Status Sheet, Mar. 28, 1997.

37. See Melvin Interview, *supra* note 18.

38. See Interview with Sen. Rooney Bowen, Senate District No. 13 (Apr. 21, 1997).

39. *Id.*

40. HB 587 (SCS), 1997 Ga. Gen. Assem. The Senate substitute borrowed much of the language for the new subsection from the federal Driver's Privacy Protection Act. Compare O.C.G.A. § 40-5-2(c)(1)(G) (1997) with 18 U.S.C. § 2721(b)(3) (1994).

41. See Final Composite Status Sheet, Mar. 28, 1997.

42. See Walker Interview, *supra* note 24.

43. See Melvin Interview, *supra* note 18. As an example, the Georgia Act eliminates the federal provision allowing access to private investigators; a proposal to add this provision failed in the General Assembly. See *id.*

44. O.C.G.A. 40-5-1(13.5) (1997); 18 U.S.C. § 2725 (1994).

45. Compare 18 U.S.C. § 2725 (1994), with O.C.G.A. § 40-5-1(13.5) (1997).

46. O.C.G.A. § 40-5-2 (1997).

- (1) by written consent of the driver;⁴⁷
- (2) to a potential insurer (limited to name, address, driver identification number, and medical or disability information);⁴⁸
- (3) in circumstances involving the Georgia Uniform Commercial Driver's License Act;⁴⁹
- (4) to judges, prosecutors, or law enforcement agencies for use in investigations/prosecutions, or to driver's licensing agencies of other states (limited to name, address, driver identification number, and medical or disability information);⁵⁰
- (5) to public and private schools pursuant to an application for employment as a school bus driver;⁵¹
- (6) to a car rental agency (but only with the written release of the driver and limited to name, address, driver identification number, and medical or disability information);⁵²
- (7) to legitimate businesses for prevention of fraud against them by individuals (limited to name, address, and driver identification number);⁵³
- (8) to government bodies for carrying out official functions (limited to name, address, driver identification number, and medical or disability information);⁵⁴
- (9) to the United States Selective Service System and the Georgia Crime Information Center (limited to name, most current address, license number, and date of birth);⁵⁵
- (10) to the United States Department of Defense for recruiting purposes (but only compilations of names, dates of birth, sex, and most current addresses of licensees between the ages of sixteen and twenty-four and no more than once every two months);⁵⁶
- (11) to the Department of Human Resources for the recovery of delinquent child support payments (limited to compilations of names, dates of birth, and most current addresses of license applicants);⁵⁷
- (12) to local fire or police departments (limited to abstracts of driving records for potential or current employees);⁵⁸

47. *Id.* § 40-5-2(c)(1)(A).

48. *Id.* § 40-5-2(c)(1)(B).

49. *Id.* § 40-5-2(c)(1)(C); *see also id.* §§ 40-5-140 to -159 (1994 & Supp. 1996) (listing exact provisions of Georgia Uniform Commercial Driver's License Act).

50. *Id.* § 40-5-2(c)(1)(D) (1997).

51. *Id.* § 40-5-2(c)(1)(E).

52. *Id.* § 40-5-2(c)(1)(F).

53. *Id.* § 40-5-2(c)(1)(G).

54. *Id.* § 40-5-2(e).

55. *Id.* § 40-5-2(f)(1).

56. *Id.* § 40-5-2(f)(2).

57. *Id.* § 40-5-2(f)(3). For further information on the Child Support Recovery Act, *see id.* § 19-11-1 (1991 & Supp. 1996).

58. *Id.* § 40-5-2(f)(4) (1997).

(13) to organ procurement organizations;⁵⁹ and
 (14) for use regarding voter registration.⁶⁰

In essence, according to Meredith Melvin, Legislative Liaison for the DPS, the Act reflects the public's fear of misuse of fingerprinting by limiting the release of fingerprints from the driver's license to law enforcement or for judicial purposes.⁶¹

The Act contains several other administrative provisions pertaining to drivers' records. For example, the DPS is required to maintain records of all releases of information for a period of four years and provide such records to the individual affected if he or she requests them, unless the information is released because the person is the subject of a criminal investigation.⁶² The Act also applies the same restrictions on release of information to individuals carrying a "state identification card" versus a driver's license.⁶³ To defray the costs of providing information from drivers' records, the Act allows the DPS to collect limited fees for releases of the information.⁶⁴ To back up all of the limitations on release of personal information, the Act makes violations of its restrictions "a misdemeanor of a high and aggravated nature."⁶⁵

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59. *Id.* § 40-5-2(f)(5). For further information on the provisions covering organ procurement organizations, see *id.* § 40-5-25(d) (1994 & Supp. 1996).

60. *Id.* § 40-5-2(f)(6) (1997). For further information on the use of personal information for voter registration, see *id.* § 21-2-221 (1993 & Supp. 1996).

61. Melvin Interview, *supra* note 18.

62. See O.C.G.A. § 40-5-2(h) (1997).

63. *Id.* §§ 40-5-2(i), -105.

64. See *id.* § 40-5-2(j).

65. *Id.* § 40-5-2(g). For a description of the punishments available for such crimes, see *id.* § 17-10-4 (1990 & Supp. 1996).