

AN ACT

ENTITLED, An Act to prohibit the disclosure and use of personal information contained in certain motor vehicle records.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as follows:

Terms used in this Act mean:

- (1) "Department," the Department of Revenue;
- (2) "Disclose," to knowingly 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, organization, or entity, by any means of communication;
- (3) "Express consent," consent in writing, and includes consent that is conveyed electronically that bears an electronic signature;
- (4) "Individual record," a motor vehicle record containing personal information about a designated person who is the subject of the record as identified in a request;
- (5) "Motor vehicle record," any record that pertains to a motor vehicle registration, motor vehicle title, or document issued by the department or any other state or local agency authorized to issue any such forms of credentials;
- (6) "Personal information," information that identifies a person, including a social security number, driver identification number, name, address (but not the five-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving or equipment-related violations, or registration status;
- (7) "Record," includes any book, paper, photograph, photostat, card, film, tape, recording, electronic data, printout, or other documentary material regardless of physical form or characteristics.

Section 2. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as follows:

Notwithstanding any other provision of state law to the contrary, except as provided in sections 3 to 5, inclusive, of this Act, the department and any officer, employee, agent, or contractor thereof may not disclose personal information about any person obtained by the department in connection with a motor vehicle record. Under no circumstances may a person's social security number or medical or disability information from a motor vehicle record be disclosed, except for the purposes permitted by subdivisions (1), (3), and (5) of section 5 of this Act.

Section 3. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as follows:

Personal information 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 nonowner 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, 15 U.S.C. 2021 et seq., as of January 1, 2001, the Automobile Information Disclosure Act, 15 U.S.C. 1231 et seq., as of January 1, 2001, and the Clean Air Act, 42 U.S.C. 7401 et seq., as of January 1, 2001, chapters 301, 305, and 321-331 of Title 49, as of January 1, 2001, and agency regulations enacted or adopted pursuant to the authority of, or to attain compliance with, these Acts of Congress.

Section 4. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as follows:

Personal information may be disclosed to any person who demonstrates, in such form and manner as the department prescribes, that express consent of the person who is the subject of the information has been obtained.

Section 5. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as follows:

Personal information may be disclosed to any person by the department on proof of the identity of the person requesting the record and representation by such person that the use of the personal

information will be strictly limited to the following described uses:

- (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 government agency in carrying out its functions;
- (2) For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only under the following circumstances:
 - (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 submitted is not correct or is no longer correct, to obtain the correct information for the purposes of preventing fraud by pursuing legal remedies against, or recovering on a debt or security interest against, the individual;
- (3) For use in connection with any civil, criminal, administrative, or arbitral 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;
- (4) 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;
- (5) 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, anti-fraud activities, rating, or underwriting;
- (6) For use in providing notice to the owners or lienholders of towed or impounded vehicles;
- (7) For use by any licensed private investigative agency or licensed security service for any purpose permitted under this section;
- (8) For use in connection with the operation of private toll transportation facilities;

- (9) 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.

Section 6. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as follows:

The department may, prior to the disclosure of personal information as permitted under sections 2 to 5, inclusive, of this Act, require the requesting person to meet conditions for the purposes of obtaining reasonable assurance concerning the identity of such requesting person, and, to the extent required, that the use will be only as authorized, or the consent of the person who is the subject of the information has been obtained. Such conditions may include the making and filing of a written application in such form and containing such information and certification requirements as the department may prescribe.

Section 7. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as follows:

Any authorized recipient, except a recipient of an individual record under section 6 of this Act, who resells or rediscloses personal information shall maintain for a period of at least five years records as to the information obtained and the permitted use for which it was obtained and shall make such records available for inspection by the department, upon request.

Section 8. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as follows:

Any person who requests disclosure of personal information from department records and who misrepresents his or her identity or knowingly makes a false statement to the department on any application required to be submitted pursuant to this Act is guilty of a Class 1 misdemeanor. However, if any person uses the personal information obtained pursuant to this Act to commit a crime of violence as defined in § 22-1-2, the person is guilty of a Class 5 felony.

Section 9. That § 32-5-90.2 be repealed.

Section 10. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as follows:

For the purpose of license renewal, any person in possession of a motor vehicle title or license renewal certificate provided by the state or the county may renew the vehicle's registration on behalf of the owner. Presentation of the motor vehicle title or license renewal certificate by anyone other than the owner is deemed consent of the vehicle owner. Any person who knowingly misrepresents or makes any false statement for license renewal is guilty of a Class 1 misdemeanor.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1045

Chief Clerk

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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1045
File No. _____
Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State