

Serious Liability Alert:

Unauthorized Use of Information from Motor Vehicle Records

A potentially significant liability issue has surfaced that VLCT PACIF wants you to be aware of. Large lawsuits have been brought in other states due to non compliance with **18 U.S.C. 2721, “Prohibition on Release and Use of Certain Personal Information from State Motor Vehicle Records.”** Due to the civil recourse listed in the statute, attorneys who notice that Motor Vehicle Records (MVRs) are being used for unauthorized purposes are winning civil damages for plaintiffs. This is costing municipalities in other states large sums of money, and we urge you to take steps to prevent this risk in your organization. Law enforcement is likely to have the most exposure in a municipality because they have reason to obtain MVRs on a daily basis. Please make sure your municipality has a policy against accessing MVRs for unauthorized purposes and that you train to this policy and consistently enforce adherence to it.

This alert summarizes some parts of the law and quotes others. For the actual text of the entire law, www.law.cornell.edu/uscode/text/18/part-I/chapter-123 is both easy to navigate and to read onscreen.

Background

The **Driver’s Privacy Protection Act of 1994 (DPPA)**, Title XXX of the Violent Crime Control and Law Enforcement Act, is a U.S. federal statute governing the privacy and disclosure of personal information contained in state motor vehicle records. The law was passed after opponents of abortion rights were found to be using public driver’s license databases to track down and harass abortion providers and patients, most notably besieging Susan Wicklund’s home for a month and following her daughter to school. This act is currently codified at **Chapter 123 of Title 18 of the United States Code**. The DPPA rules apply to Departments of Motor Vehicles as well as other “authorized recipient[s] of personal information.”

18 USC Chapter 123 [Summary of § 2721, 2722, and 2723]

- Prohibits the disclosure of personal information (defined below) without the express consent of the person to whom such information applies, with the exception of certain circumstances set forth in 18 U.S.C. § 2721 (“Permissible Uses” summarized below).
- Prohibits the disclosure of highly restricted personal information (defined below) without the express consent of the person to whom such information applies, except the Permissible Uses #1, #4, #6, and #9 listed on the next page, provided that this shall not in 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.
- Makes it illegal to obtain a driver’s information for unlawful purposes or to make false representations to obtain such information;
- Imposes record-keeping requirements on “authorized recipients”;
- Establishes criminal fines for noncompliance; and
- Establishes grounds for drivers to file civil suits against those who unlawfully obtain their information.

Definitions [Actual text of § 2725]

- (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.

Permissible Uses of Motor Vehicle Records [Summary of § 2721(b)]

- (1) For any government agency to carry 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 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 the Automobile Information Disclosure Act, the Motor Vehicle Information and Cost Saving Act, the National Traffic and Motor Vehicle Safety Act of 1966, the Anti Car Theft Act of 1992, and the Clean Air Act.
- (3) For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only to:
 - verify the accuracy of personal information, or
 - correct information.
- (4) For use in connection with any matter before a court or arbitration proceeding.
- (5) For producing statistical reports and other research, provided that personal information is not published, redisclosed, or used to contact individuals.
- (6) For use by insurance companies or self-insurance entities.
- (7) For providing notice to owners of towed vehicles.
- (8) For use by licensed private investigation agencies for a permitted DPPA use.
- (9) For use by employers to obtain or verify information about the holder of a CDL.
- (10) For use by private toll transportation facilities.
- (11) For response to requests if the State has the express consent of the individual.
- (12) For bulk distribution for surveys, marketing materials, or solicitations if the State has the express consent of the individual.
- (13) When written consent of the individual is provided.
- (14) For other use specifically authorized by state law if the use is related to the operation of a motor vehicle or public safety.

§ 2724 - Civil Action [Actual text of § 2724]

(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.

PACIF's Recommendation

One employee's lapse can damage both the reputation and the finances of your municipality. Make sure your employees understand the penalties for unauthorized access to the personal information in MVRs. Although we can hope that every time an employee accesses an MVR it is for a permissible cause, in reality Vermonters are probably not immune to temptation. Civil lawsuits are becoming common because attorneys see them as easy money — and these suits are easy for plaintiffs to win, because **there is no valid defense for unauthorized access or use of personal information from MVRs**. Currently, 82 municipalities in the Midwest have 110 of these claims worth a total of about \$1 million.

Protect your municipality from this kind of liability claim. Establish a clear policy forbidding unauthorized access to MVRs or using the personal information from MVRs for unauthorized purposes. Then train to the policy and enforce the policy. A model policy is posted at www.vlct.org/rms/pacif/liability/. If you have questions or would like assistance, please call your VLCT loss control consultant at 800-649-7915.