

940 CMR: OFFICE OF THE ATTORNEY GENERAL

940 CMR 37.00: REGULATIONS AUTHORIZING DISCLOSURE OF MASSACHUSETTS LICENSE OR LEARNER'S PERMIT APPLICANT OR HOLDER INFORMATION

Section

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37.01 ~~37.01~~: Purpose

The Attorney General promulgates 940 CMR 37.00, relating to the public records status and disclosure by the Registrar of Motor Vehicles of information relating to applicants and holders of Massachusetts licenses and learner's permits, pursuant to her authority in St. 2022, c. 81, § 7: *Act Relative to Work and Family Mobility*.

37.02 ~~37.02~~: Scope

- (1) 940 CMR 37.00 applies only to the following, as defined in St. 2022, c. 81, § 7:
 - ~~(a)~~ any information provided by or relating to an applicant for a Massachusetts license under (a) M.G.L. c. 90, § 8;
 - (b) any information provided by or relating to an applicant for a learner's permit under M.G.L. c. 90, § 8B;
 - (c) any information provided by or relating to the holder of a Massachusetts license issued under M.G.L. c. 90, § 8; and
 - ~~(b)~~ (d) any information provided by or relating to the holder of a learner's permit issued under M.G.L. c. 90, § 8B.
- (2) Such information includes, but is not limited to, personally identifying information, documents, and communications between the applicant or holder of a Massachusetts license or ~~learner's~~ learner's permit and the Registrar of Motor Vehicles. Furthermore, such information includes, but is not limited to, failure to provide proof of lawful presence as defined in M.G.L. c. 90, § 1. For purposes of 940 C.M.R. 37.00, "personally identifying information" shall include, but not be limited to, "personal information" and "highly restricted personal information" as those terms are defined in 18 U.S.C. § 2725.
- (3) The Registrar of Motor Vehicles is authorized to disclose such information unless prohibited by 940 CMR 37.04.

37.03 ~~37.03~~: Definitions

As used in 940 CMR 37.00, the following terms shall, unless the context clearly requires otherwise, have the following meanings:

Act. An Act Relative to Work and Family Mobility as enacted in St. 2022, c. 81, § 7.

Applicant. An individual who files an application by mail or otherwise to the Registrar of Motor Vehicles or any agent designated by them for the purpose.

Lawful Presence. Persons who have:

- (a) lawful status in the United States; or
- (b) documentation of lawful presence in the United States satisfactory to the registrar, in consultation with the United States Department of Homeland Security.

Lawful Status. The same meaning as defined in 6 CFR 37.3.

Massachusetts License. A license to operate motor vehicles that is not issued in compliance with the standards established by the United States Department of Homeland Security in 6 CFR 37.

~~7/21/23 (Effective 6/30/23) 249 EMERGENCY~~

~~(Mass. Register #1500, 7/21/2023, emergency reg.)~~

~~37.03 : continued~~

Registrar. The Massachusetts Department of ~~Transportation's~~Transportation's Registrar of Motor Vehicles established pursuant to M.G.L. c. 6C, § 56, or their officer, employee, agent, or contractor, including the members of the Fraud Unit of the Massachusetts State Police pursuant to M.G.L. c. 22C and St. 1991, c. 412, as well as any and all AAA employees who provide Registry of Motor Vehicles-related services at AAA locations in Massachusetts.

37.04: Requirements for Disclosure

(1) Any information or record disclosed pursuant to St. 2022, c. 81, § 7 may be disclosed only insofar as it is not to be used for the purpose of enforcing federal immigration law or provided to an agency that primarily enforces immigration law, unless the Registrar is provided with a lawful court order or judicial warrant signed by a judge appointed pursuant to Article III of the United States Constitution~~-, a federal grand jury or trial subpoena, or as otherwise required by federal law~~. When responding to such an order~~-or~~, warrant~~, or subpoena~~, the Registrar may only disclose those records or information specifically requested in the order~~-or~~, warrant~~, or subpoena~~.

Upon the ~~Registrar's~~Registrar's receipt of a lawful court order~~-or~~, judicial warrant~~signed by a judge appointed pursuant to Article III of the United States Constitution, or subpoena~~, the Registrar shall, no later than three business days after receipt of such request make reasonable efforts to notify the individual about whom such information was requested, informing such individual of the request and the identity of the agency that made such request, unless disclosure would impede a criminal investigation.

(2) For purposes of 940 CMR 37.04, the term "agency that primarily enforces immigration law" shall include, but not be limited to, United States Immigration and Customs Enforcement and United States Customs and Border Protection, and any successor agencies having similar duties. Enforcing federal immigration law includes, but is not limited to, investigating for, participating in, cooperating with, or assisting in federal immigration enforcement, including enforcement of civil immigration laws and 8 U.S.C. §§ 1325 or 1326.

(3) Except as required by federal law and in the specific circumstances delineated in 940 CMR 37.04(3)(a) and (b), the Registrar shall under no circumstances disclose any documents used to prove identity, date of birth, lawful presence, or Massachusetts residency submitted with an application for either a Massachusetts license pursuant to M.G.L. c. 90, § 8 or a learner's~~learner's~~ permit pursuant to M.G.L. c. 90, § 8B, nor identify as part of any disclosure which such documents were submitted as part of any such application.

(a) Where the Registrar determines there are indicia of criminal fraud, the Registrar may disclose such documents or information to state or local law enforcement officials when needed to conduct a criminal investigation of said fraud.

(b) The Registrar may, pursuant to a memorandum of understanding under M.G.L. c. 51, § 42G½, disclose to the State Secretary such documents or information to the extent necessary to identify eligible voters.

(4) Except as required by federal law, or to local and state law enforcement where the Registrar determines there are *indicia* of criminal fraud, the Registrar shall under no circumstances disclose information pertaining to whether an Applicant has submitted a social security denial letter or affidavit of no SSN as part of their application for a Massachusetts license or a learner's~~learner's~~ permit, including any subsequent renewal application. Except as required by federal law, and in the specific circumstances delineated in 940 CMR 37.04(4)(a), (b) and (c), the Registrar shall under no circumstances disclose an Applicant's~~Applicant's~~ social security number, information pertaining to whether an Applicant has submitted a social security number, or information pertaining to or that otherwise may reveal whether an Applicant is eligible for a social security number.

(a) The Registrar may provide such information to state or local law enforcement where the Registrar determines there are indicia of criminal fraud.

(b) The Registrar may provide an individual's~~individual's~~ social security number to a

state agency where the state agency has a legitimate business purpose requiring use of that ~~individual's~~individual's social security number.

(c) The Registrar may provide an ~~individual's~~individual's social security number to the administrator of the Driver License Compact, entered into pursuant to M.G.L. c. 90, § 30B, including for use within the state-to-state verification system and any subsequent or similar multistate data sharing program used in connection with matters related to motor vehicle or driver safety, or status of motor vehicle or driver credentials.

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- (5) Except as specified in 940 CMR 37.04(6) and (7), the Registrar shall require any person or entity that receives or has access to records or information from the Registrar pursuant to 940 CMR 37.04 to certify under penalty of perjury to the Registrar, before such receipt or access, and as a condition of renewal of any agreement for such receipt or access, that such person or entity shall not:
- (a) use or disclose such records or information for the purpose of enforcing federal immigration law; or
 - (b) disclose such records or information to any agency that primarily enforces immigration law or to any employee or agent of any such agency, unless ~~the officer, employee, agent, or contractor is~~ provided with a lawful court order or judicial warrant signed by a judge appointed pursuant to Article III of the United States Constitution, a federal grand jury or trial subpoena, or as otherwise required by federal law.
 - (i) This certification procedure also applies to receipt or access to records or information from the Registrar facilitated through a database or automated network.
 - (ii) Violation of 940 CMR 37.00, including such certification, shall be unlawful. The Registrar shall immediately revoke access to information to any individual or entity that the Registrar has reason to believe has violated 940 CMR 37.00, including by violating such certification.
 - (iii) The Registrar shall deny access to information to any individual or entity that the Registrar has reason to believe will violate any such certification.
 - (iv) If the Massachusetts Bay Transit Authority or any Massachusetts cities and towns fail to certify, the Registrar may provide an extension of 30 business days after the deadline before revoking access related to transit operations, traffic enforcement or tax collection purposes.
- (6) Notwithstanding 940 CMR 37.04(5)(b), certifications by the Department of Criminal Justice Information Services and state and local law enforcement agencies may permit these entities to provide records or information to the United States Department of Homeland Security, Investigations (“HSI”), provided that HSI agrees in writing to use the information only to investigate alleged crimes and not to enforce civil immigration laws or 8 U.S.C. §§ 1325 and 1326, and that any such written agreement is provided to the Registrar and renewed at least annually.
- (7) Notwithstanding 940 CMR 37.04(5)(b), certifications by the Department of Criminal Justice Information Services and state and local law enforcement agencies may permit these entities to provide records or information to the United States Department of Homeland Security, Customs and Border Protection (CBP), provided that CBP agrees in writing to use the information only as necessary for an individual who has consented to have their information accessed for purposes of seeking acceptance into a trusted traveler program or trusted worker program, seeking to participate in CBP’s employee and applicant suitability process, or seeking to obtain temporary and permanent waivers of inadmissibility, and not to enforce civil immigration laws or 8 U.S.C. §§ 1325 and 1326, and that any such written agreement is provided to the Registrar and renewed at least annually.
- (8) Subject to the limitations set forth in 940 CMR 37.04(4), the Registrar may provide Registry and/or Merit Rating Board data and information without the certification requirement contained in 940 CMR 37.04(5) to:
- (a) any Court or the Division of Insurance’s Board of Appeal on Motor Vehicle Liability Policies and Bonds, inclusive of their agents, for the purpose of carrying out their functions;
 - (b) any State Department of Motor Vehicles or State Agency responsible for toll management, inclusive of their agents for use in connection with matters relating to motor

vehicle or driver safety, status of driver credentials, or the operation of toll transportation facilities; or

(c) any individual who is a permissible user under the Drivers Privacy Protection Act, 18 U.S.C. § 2721 who is conducting a motor vehicle transaction, including but not limited to a registration or a title transaction, and presents a completed application for such transaction. For the purpose of this provision, a motor vehicle transaction does not include any commercial and/or passenger license or permit transactions.

- ~~(6)~~(9) Nothing in 940 CMR 37.00 shall be interpreted to authorize the designation as a public record of any information provided by or relating to:
- (a) the applicant for a Massachusetts license;
 - (b) the applicant for a learner's permit;
 - (c) the holder of a Massachusetts license; or
 - (d) the holder of a learner's permit.;

- (10) Notwithstanding 940 CMR 37.04(8), the Registrar may release the following Registry and/or Merit Rating Board data as a public record, provided that all personal information and highly restricted personal information, as defined in 18 U.S.C. § 2725 have been removed:
- a) vehicle information, such as vehicle inspection data, titles, VIN numbers, and license plate numbers, provided that the data does not, through ordinary means, identify a license or permit applicant, or a license or permit holder; and/or
 - b) documents provided to the Registrar by state or local government agencies, so long as these documents would have been considered public records before they were provided to the Registrar.

- ~~(7)~~(11) The provisions of 940 CMR 37.04(3) and (4) shall be enforced starting November 1, 2023 with respect to state agencies, municipalities, the Social Security Administration, and business partners where access to the data preexists the effective date of these regulations and continued access is critical to the business operations of such state agencies, municipalities, the Social Security Administration, and business partners, as determined by the Registrar herself or her designee. Such access shall be subject to the restrictions on use and sharing of information under 940 CMR 37.04(1) and the certification requirements in 940 CMR 37.04(5). ~~The Registrar shall issue notice to such state agencies, municipalities, the Social Security Administration, and business partners concerning their obligations to protect data from certain disclosure, pursuant to 940 CMR 37.04(1), and certification shall be obtained from these entities, pursuant to 940 CMR 37.04(5), by or before July 28, 2023.~~

37.05: Severability

If any provision of 940 CMR 37.00 or the application of any provision of a regulation to any person or circumstance is held to be invalid, the validity of the remainder of 940 CMR 37.00 and the applicability of such provision to other persons or circumstances will not be affected.

REGULATORY AUTHORITY

940 CMR 37.00: St. 2022, c. 81, § 7.

NON-TEXT PAGE