

940 C.M.R. 37.00:

**REGULATIONS AUTHORIZING DISCLOSURE OF
MASSACHUSETTS LICENSE OR LEARNER'S PERMIT
APPLICANT OR HOLDER INFORMATION**

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37.01: Purpose

The Attorney General promulgates 940 C.M.R. 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 the Act Relative to Work and Family Mobility, Section 7 of Chapter 81 of the Acts of 2022.

37.02: Scope

940 C.M.R. 37.00 applies only to the following, as defined in Section 7 of Chapter 81 of the Acts of 2022: (1) any information provided by or relating to an applicant for a Massachusetts license under M.G.L. c. 90, § 8; (2) any information provided by or relating to an applicant for a learner's permit under M.G.L. c. 90, § 8B; (3) any information provided by or relating to the holder of a Massachusetts license issued under M.G.L. c. 90, § 8; and (4) any information provided by or relating to the holder of a learner's permit issued under M.G.L. c. 90, § 8B.

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 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.

The Registrar of Motor Vehicles is authorized to disclose such information unless prohibited by 940 C.M.R. 37.04.

37.03: Definitions

As used in 940 C.M.R. 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 Section 7 of Chapter 81 of the Acts of 2022.

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: (i) lawful status in the United States; or (ii) 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 C.F.R. 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 C.F.R. 37.

Registrar. The Massachusetts Department of Transportation's Registrar of Motor Vehicles established pursuant to General Laws Chapter 6C, section 56, or their officer, employee, agent, or contractor, including the members of the Fraud Unit of the Massachusetts State Police pursuant to General Laws Chapter 22C and Chapter 412 of the Acts of 1991, 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 Section 7 of Chapter 81 of the Acts of 2022 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. When responding to such an order or warrant, the Registrar may only disclose those records or information specifically requested in the order or warrant.
 - a. Upon the 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, the Registrar shall, no later than three 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 C.M.R. 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 C.M.R. 37.04(3)(a) and (3)(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 section 8 of Chapter 90 of the General Laws or a learner's permit pursuant to section 8B of said Chapter 90, 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 General Laws Chapter 51, section 42G ½, 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 permit, including any subsequent renewal application. Except as required by federal law, and in the specific circumstances delineated in 940 C.M.R. 37.04(4)(a), (4)(b), and (4)(c), the Registrar shall under no circumstances disclose an 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 social security number to a state agency where the state agency has a legitimate business purpose requiring use of that individual's social security number.
 - c. The Registrar may provide an individual's social security number to the administrator of the Driver License Compact, entered into pursuant to General Laws Chapter 90, section 30B, including for use within the state-to-state verification system.
- (5) The Registrar shall require any person or entity that receives or has access to records or information from the Registrar pursuant to 940 C.M.R. 37.04 to certify under penalty of perjury to the Registrar, before such receipt or access, that such person or entity shall not (i) use or disclose such records or information for the purpose of enforcing federal immigration law or (ii) 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. This certification procedure also applies to receipt or access to records or information from the Registrar facilitated through a database or automated network.
 - b. Violation of 940 C.M.R. 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 C.M.R. 37.00, including by violating such certification.
 - c. The Registrar shall deny access to information to any individual or entity that the Registrar has reason to believe will violate any such certification.
- (6) Nothing in these regulations shall be interpreted to authorize the designation as a public record of any information provided by or relating to (1) the applicant for a Massachusetts license, (2) the applicant for a learner's permit, (3) the holder of a Massachusetts license, or (4) the holder of a learner's permit.
- (7) The provisions of 940 C.M.R. 37.04(3) and (4) shall not take effect until 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 C.M.R. 37.04(1) and the certification requirements in 940 C.M.R. 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 C.M.R. 37.04(1), and certification shall be obtained from these entities, pursuant to 940 C.M.R. 37.04(5), by or before July 28, 2023.

37.05: Severability

If any provision of 940 C.M.R. 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 C.M.R. 37.00 and the applicability of such provision to other persons or circumstances will not be affected.

REGULATORY AUTHORITY

940 C.M.R. 37.00: **Section 7 of Chapter 81 of the Acts of 2022.**