

USE OF MOTOR VEHICLE REPORTS UNDER GEORGIA LAW
UPDATE

by
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The following is an article that was first prepared in 2001. Since then, the legislature has reorganized the Department of Motor Vehicles and Public Safety. The name of the Department that is now in charge of maintaining and releasing driving record information is the Department of Driver Services. The substantive language of the statutes referred to below has not changed, with one significant exception. The written consent of a driver to the release of his or her driving record no longer needs to be notarized. Further information regarding another exception to the rule forbidding the sharing of driving record information obtained by insurance agents has also been added.

In 1997, the Georgia General Assembly completely rewrote O.C.G.A. § 40-5-2, which governs the keeping of driving records and the release of information in those records to third parties. In 2000, the General Assembly made additional changes to that statute to govern the electronic on-line release of such information to insurers, insurance support organizations, and self-insured entities and their respective agents, employees, or contractors.

Under the 1997 version of that statute, which took effect on April 29, 1997, release of driving record information was restricted to "any insurer or insurance support organization, or . . . a self-insured entity, or its agents, employees, or contractors." Such information can only be released to those persons "in connection with claims investigation activities, antifraud activities, rating, or underwriting involving the" subject driver. Any person who makes a written request for this information must identify himself or herself and certify that the information requested will be used only for the purpose specified in the request and that he or she has on file an application for insurance or for the renewal or amendment of an existing policy involving the subject driver.

Although the language of the 1997 version of the statute was not as clear as it could have been, it did appear that "agents" of an "insurer" were eligible to request driving records. This conclusion was confirmed by the 2000 amendments to that statute, one of which specifically authorized an insurer to contract with the Georgia Technology Authority to permit "its agents" to obtain "rating information" from the Department of Public Safety on-line. Under this new provision of the statute, an insurance agent can obtain information directly from the Department's records but only about a proposed insured's "number of violations" of the DUI laws and "the number and type of other moving traffic violations which were committed by the proposed insured driver within the immediately preceding three or five years", as specified by the agent making the request. The statute specifically prohibits the release to insurance agents pursuant to a contract of the type described above of any "other information concerning a driver's operating record."

In any event, it is important to remember that all such requests must be for one or more of the purposes specified in the statute and can only be made if the agent has an application for insurance on file or is handling the renewal or amendment of an existing policy that covers motor vehicle use by the subject driver. In addition, these restrictions apply even where the agent is not making a direct request for driving record information. If the agent is using a third party to request driving records, regulations adopted by the Georgia Department of Public Safety require such third party to certify that the persons for whom it is requesting driving records are entitled to receive them under the statute.

It is also important to note that O.C.G.A. § 40-5-2 specifically prohibits the transfer or other disclosure of driving record information received by an authorized person to any other person or the use of that information for any purpose other than those permitted by the statute. The statute makes it a crime to violate these prohibitions or to make a misrepresentation or other false statement in connection with a request for driving record information. Thus, it appears that an independent agent cannot divulge driving record information to the subject driver's employer, or any other person, unless a good argument can be made that doing so would be in furtherance of one of the permitted purposes for obtaining that information.

There are three exceptions to this limitation on disclosure that may be applicable to an insurance situation. First, the subject driver can give his or her written consent for providing driver's record information to the employer or any other person. Prior to July 1, 2006, any such written consent had to be notarized. That requirement no longer exists, but the written consent must still identify the person or company who is authorized to receive driving record information.

The other two possible exceptions are found in O.C.G.A. § 40-5-155. This statute requires the Department of Driver Services to furnish, upon request, "full information regarding the driving record of any person" to "any employer or prospective employer" of such person upon payment of a \$10 fee. For these purposes an "employer or prospective employer" is limited to any person "who owns or leases a commercial motor vehicle or assigns persons to drive a commercial motor vehicle on its behalf." What constitutes such a motor vehicle is specifically defined in O.C.G.A. § 40-5-142. In general such motor vehicles are limited to those that are designed or used to transport passengers or property and that (i) have a gross vehicle weight rating of 26,001 or more pounds, (ii) are designed to carry 16 or more passengers, including the driver, or (iii) transport hazardous materials as defined by specified federal laws and regulations.

O.C.G.A. § 40-5-155 also permits the release of "the driving record of any person" to "insurers" upon the payment of a \$10 fee. It is important to note that the language of this exception and the one for employers or prospective employers does not include their "agents", so it is unclear what authority insurance agents may have to obtain driving record information under either of the above exceptions and thus, to share any such information with their customers.

This article is not intended to provide "legal advice" on the issues discussed in it, but is only for information purposes. The reader should seek advice from an attorney who is knowledgeable in this area about their specific situation before acting.

Mr. Burnette and Mr. Joyner, of the law firm of Joyner & Burnette, P.C., are the attorneys for the Association. They handle the "IIAG Free Legal Service" program, under which each agency is entitled to one 15-minute telephone consultation per calendar quarter. You may contact them by calling 1-800-IIAG-911 or 404/377-1200. If you would like a copy of any of the statutes or regulations referred to in this article, please contact either of them.