

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND TOURISM

The meeting was called to order by Chairman Ben Vidricksen at 9:05 a.m. on March 18, 1997 in Room 254-E of the Capitol.

All members were present except:

Committee staff present: Hank Avila, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Marian Holeman, Committee Secretary

Conferees appearing before the committee: Betty McBride
Norm Sherbert
Ben Bauman
Harriet Lange
Bill Felber
Roz Hutchinson

Others attending: See attached list

AMENDED HB 2010 OPEN RECORDS ACT - DIVISION OF VEHICLES

Betty Mc Bride, Director, Division of Vehicles, explained the need for this bill to reaffirm compliance with the Federal Driver's Privacy Protection Act of 1994 which takes effect September 13, 1997. Noncompliance means the state will be subject to a civil penalty of not more than \$5,000 per day for each day of substantial noncompliance. Ms. McBride then explained the opt-out system which will enable the Department to be in complete compliance with the Federal Act. **Amended HB 2010** in its present form is needed to complete the requirement for compliance with Federal law (Attachment 1).

Members explored exceptions to the law, driver's license and title opt out, present law allowing access to records, etc. Staff explained that current law is an "open records law," which means that an individual can come in and access these records at any time. What the law provides is that particular information is confidential - that which relates to physical, mental, diversion agreements, this type information. The new law came about as an anti-stalking device. Buyers currently have a contract or bulk rate which enable them to buy certain parts of these records at a lower rate. This bill says our records are open, but then we have confidential information and then we are adding on the bottom of that is that you can opt out of that information, close your records for the particular things that individuals might come in and access. Basically, that is all that will be shut down. Only three companies buy at the bulk rate. Part of the money goes to the Highway Patrol training center. They receive approximately three million dollars per year from one source and about \$90,000 from another which will go up to about \$200,000 due to a recent price increase. If they should lose that revenue it would certainly affect their ability to maintain and upgrade their computer system. The opt out option will remain in effect forever unless specifically revoked.

Norm Sherbert, Polk Company reviewed the history of this bill and the Polk Company's concern with it. He provided an overview of the Federal Act and Polk's interest in it. He explained that he was present to ask the Committee to consider use of bulk purchased motor vehicle records. Polk has worked with Ms. McBride and the Revisor's Office to consider language dealing with usage of records they are permitted to purchase. One problem that arose during House hearings on this bill related to Kansas, INK's fear that companies such as Polk would compete in the sale of records. Polk attempted to eliminate that problem as they do not wish to compete with the State in any manner. Proposed amendments are included in (Attachment 2). INK representative was present but indicated they were not there to testify. The Chair asked for their input the next time the Committee works this bill.

The following conferees appeared in support of allowing the media; newspapers, radios, etc., access to certain types of information: Ben R. Bauman, News Director, WIBW (Attachment 3); Harriet Lange,

President/Executive Director, Kansas Association of Broadcasters (Attachment 4); Bill Felber, Executive Director, "The Manhattan Mercury" (Attachment 5); and Roz Hutchinson, President, Kansas Chapter, Society of Professional Journalists (Attachment 6). The Kansas Press Association's proposed amendments to **HB 2010** were submitted by John Reinhart (Attachment 7).

Ms. McBride advised that the media was not included in the Federal Act. Therefore, states that have tried to implement it into state acts have been taken to court. The Chair announced this bill will be considered Friday. The Committee will meet immediately after Friday session and INK should be prepared to testify at that time.

The meeting adjourned at 10:10 a.m.

The next meeting is scheduled for March 19, 1997.

Betty McBride, Director of Vehicles
Kansas Department of Revenue
915 SW Harrison St.
Topeka, KS 66626-0001



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Division of Vehicles

MEMORANDUM

TO: The Honorable Ben Vidricksen, Chairman
Senate Transportation Committee

FROM: Betty McBride, Director
Division of Vehicles

DATE: March 18, 1997

SUBJECT: Amended House Bill 2010

Mr. Chairman, members of the Committee. I am Betty McBride, Director for the Division of Vehicles. I would like to express my appreciation to this Committee for the opportunity to appear before you today, asking your support for passage of Amended House Bill 2010.

Amended House Bill 2010 will reaffirm compliance, by the State of Kansas, with the Federal Driver's Privacy Protection Act of 1994, passed by the United States Congress, allowing individuals to choose to keep their vehicle records private and unavailable to anyone except those entities specifically authorized by the act.

The act is intended to give licensed drivers, and individuals with registered vehicles, the option to close their personal information reflected on the Division of Vehicles' records, to individuals and businesses which purchase information contained in state records. The act does provide the following specific exceptions which allow personal information to remain open to governmental agencies, courts, law enforcement, motor vehicle or driver safety recalls, motor vehicle emissions, employers and insurers.

Any State Department of Motor Vehicles that has a policy or practice of substantial noncompliance with this act shall be subject to a civil penalty, imposed by the Attorney General, of not more than \$5,000 per day, for each day of substantial noncompliance.

Because the State of Kansas makes vehicle records public information, available to individuals upon request, Kansas must comply with the Driver's Privacy Protection Act, and implement an option out procedure for Kansas citizens, no later than September 13, 1997.

Although the Federal legislation does not take effect until September 13, 1997, which is also the deadline for states to be in compliance with the Act, the Department felt it wanted to insure that a working system was in place by the September deadline. Therefore, we began programming changes in mid-1996 and began providing the opt-out opportunity to Kansas citizens and collecting the data on January 2, 1997; however, we will not implement the option out system on line in the State's system until September 13, 1997, at the time the Federal legislation takes effect.

We felt it was important to give Kansas citizens advance notice of their options in January and provide them the opt-out opportunity at that time for three reasons:

- 1) We want each citizen to have ample time to make an informed decision as to whether they want to opt out or leave their record as an open public record.
- 2) We want to ensure the system is working correctly ahead of the required implementation date, to avoid any penalties that could be assessed against the State from the Federal Act.
- 3) By starting in January, all 1997 vehicle and driver license renewals will receive the same information as those registering after the September 13, 1997, deadline date. This third reason is critical to avoid conducting a mass notification, such as a direct mailing, to each vehicle owner and licensed driver which would cost the state of Kansas 1.3 million dollars.

The Driver's Privacy Protection Act requires State Department of Motor Vehicles, to provide in a clear and conspicuous manner, an opportunity for individuals to prohibit disclosure of their personal information. The Department has implemented the following procedures to insure that Kansas is in compliance with the Federal Act:

- 1) The public has the opportunity to request that their record be closed at the time of driver license receipt, or registering a vehicle.
- 2) A mail in form is available upon request from the Department that can be completed and submitted to either the Department of Revenue in Topeka, or at a remote office (Driver License exam office or County Treasurer's office.) A copy is attached for your review.
- 3) Posters have been placed in a clear and conspicuous manner at all Revenue offices and County Treasurer's offices.
- 4) The next printing of the driver license handbook will have the opt out information included.
- 5) Vehicle registration renewals have an additional page to sign and opt out at renewal time. (Copy attached for your review).
- 6) Handout brochures with additional opt out information are available in each Division of Vehicles office or County Treasurer's office.
- 7) In December the Department issued news releases throughout the state to inform Kansas citizens of the opt out availability and their right to opt out.

Mr. Chairman, with these procedures in place, we feel the State of Kansas is in complete compliance with the Federal Driver's Privacy Protection Act. Passage of Amended House Bill 2010 will complete and reaffirm the Federal requirement for Kansas to Comply with the act.

Thank you again for the opportunity to appear today, Mr. Chairman. I would stand for questions at this time.

KANSAS DEPARTMENT OF REVENUE
DIVISION OF VEHICLES PO BOX 2188
TOPEKA, KANSAS 66601-2188

**DO YOU WISH TO HAVE YOUR NAME WITHHELD FROM DRIVER'S LICENSE
AND VEHICLE REGISTRATION LISTS THAT ARE MADE AVAILABLE TO THE
PUBLIC?**

In compliance with the Federal Privacy Act of 1994, the Kansas Division of Vehicles will provide vehicle owners or holders of a Kansas Driver's License or Identification Card the opportunity to protect their vehicle records, driver's license or identification card records from being obtained by any business or individual not specifically authorized to receive such information.

Beginning January 2, 1997, you may request to have your vehicle and driver's license records withheld from public use. Your request will be collected and held until the implementation date of **September 13, 1997**. The "OPT-OUT" program will then be implemented and your record cannot be sold except for exemptions specifically authorized by Federal and Kansas law.

Your choice to have your vehicle owner and registration records, driver's license or identification card records "withheld" will not totally eliminate the use of your record. There are exemptions specifically authorized by law which permit the use of these records. Choosing to have your record withheld may reduce mailings.

You may "opt-out" (request your vehicle record or driver license records be withheld) when you register your vehicle, renew your vehicle registration and/or when applying for or renewing your driver's license.

If no action is taken on your part to have these records withheld, pursuant to K.S.A. 74-2012, they will be considered public records.

To request that your records be withheld, please check the appropriate box below and provide the requested information. A request to "Opt-Out" is required for each vehicle and for your driver's license or ID card.

PLEASE NOTE: Correct information must be submitted to ensure that your requested records are withheld.

Yes, withhold my vehicle records from purchase or release for public use.
(Vehicle owner must sign below.)

Vehicle Year	Make	License Plate No.	ID Number (VIN)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Yes, withhold my driver's license or identification card records from purchase or release for public use. (Licensee/card holder must sign below.)

_____	_____
Name as on Driver's License/I.D. Card	Driver's License/I.D. Card Number
_____	_____
Address	Date of Birth
_____	_____
City, State, ZIP	

X	_____
Signature (Required)	Date Signed

Important Information

THE SALE OF VEHICLE RECORDS

Information on your Kansas driver's license and vehicle registration is — by Kansas law — open to the public. Anyone may buy your record today, individually or in bulk. For example, with your date of birth or Social Security number, your insurance agent can buy a copy of your driver's license record to verify whether you have a clean record. Or some companies today buy all Kansas drivers' license records to assist manufacturers in finding owners of vehicles with safety-related defects.

OPT-OUT

Beginning January 1997, OPT-OUT gives you the option of withholding your address and other personally identifiable information from businesses or individuals who request your records on or after the implementation date of September 13, 1997. If you OPT-OUT, it may prevent someone from obtaining your address to find out where you live, or it may prevent unsolicited mail from being sent to your home. Of course, businesses can also obtain names and addresses from sources other than the State of Kansas, such as credit bureaus, warranty registrations and magazine subscriptions. So, OPT-OUT will not eliminate all solicitations — unwanted or otherwise. In addition, if you OPT-OUT, it will not totally eliminate the use of your record. There are exceptions specifically authorized by the Federal Privacy Act of 1994 which authorize the release of your records. For instance, your records may be used in research to produce statistical reports as long as personal information is not published. Your records may be used for surveys and marketing since Kansas provides an OPT-OUT program. And your records may be used by law enforcement.

HOW TO OPT-OUT

If you would like to OPT-OUT, simply notify the clerk serving you. Please be advised you need to OPT-OUT for each type of vehicle record maintained by the Division of Motor Vehicles. Unfortunately, "opting out" through registration renewal for your automobile, for instance, does not automatically withhold your driving record. One OPT-OUT request is required for each vehicle record.

If you do not OPT-OUT, your records will be considered public records.

IMPORTANT NOTICE

The Federal Privacy Act of 1994, provides that individuals may prohibit their State motor vehicle registration record and certain personal information, from being purchased or released for public use.

Beginning January 1997, OPT-OUT gives you the option of withholding your address and other personally identifiable information from businesses or individuals who request your records on or after the implementation date of September 13, 1997. Opting to have your vehicle record "withheld" will not totally eliminate the use of your record, as there are exceptions specifically authorized by law, which authorize the use of these records. However, opting to have your record withheld will reduce mailings that originate from other sources of information used by marketers.

If no action is taken on your part indicating these records be withheld, pursuant to K.S.A. 74-2012 they will be considered public records.

To request that your record(s) be "withheld", please check the box below, sign on the appropriate line, and return with your renewal request.

Yes, withhold my vehicle record from purchase or release for public use.

Signature Required

Date Signed

Vehicles which are jointly owned require signature of only one owner requesting information be "withheld."

1-5

Testimony

March 18, 1997

By: Norman R. Sherbert

For: The Polk Company (R.L. Polk)

Before: Kansas Senate Transportation and Tourism
Committee

Subject: HB 2010--Division of vehicles, records,
prohibiting disclosure of personal information

Mr. Chairman, members of the Senate committee on
Transportation and Tourism, I am Norm Sherbert
representing The Polk Company.

As a matter of introduction, given the passage of the
Driver's Privacy Protection Act (DPPA) by Congress
in 1994, any state that sells motor vehicle records
(i.e. either individual records, or records sold in bulk
form to be used for marketing and survey, must
implement a procedure where individuals can opt-
out of having their information not disclosed. States,
if they intend to continue to sell, must have a system
in place, which substantially conforms to the DPPA
by September 13, 1997, or face penalties of \$5,000
per day.

The Polk Company buys records from all states
including Kansas in bulk form. This data is
purchased primarily for the automotive industry in
order that they can comply with federal laws such as
the Federal Safety Act and the Federal Clean Air Act
which require recall in cases where motor vehicles
exceed the standard or encounter a safety problem.
In 36 states, The Polk Company is permitted to use
this same data for purposes other than recall--i.e.
marketing and surveys. Kansas statues are mute on
the subject and therefore such commercial use is not
considered available--and Polk therefore does not
use the information in Kansas for marketing and
survey purposes.

SENATE TRANSPORTATION & TOURISM
3/18/97
ATTACHMENT 2

Now that the federal law, DPPA, requires states to give the decision and ultimate authority on how/if their motor vehicle records can be used, and since the cost of records purchased in bulk form in Kansas has risen 250 % in the last year, we see this as a reason for the Legislature and Administration to review Kansas statues and allow companies such as Polk (who can provide a very wanted and needed service to a segment of citizens of Kansas) an ability to perform direct targeted marketing and solicit survey participation on potential new product offerings.

In that regard, we have an amendment which will take into account all of the problems (real or otherwise) that were testified to during the House debate on this Bill as follows:

1. Polk will continue to purchase motor vehicle data only, and in bulk form. Personal information will not be received. Therefore, individual records will continued to be sold by Kansas, INK and such language should assure the state that we do not intend, nor will we compete for business with Kansas, INK,
2. Definitions of "personal information", "survey", and "marketing" have been included to assure that we are providing a marketing strategy of "direct targeted mail" and not creating so called junk mail,
3. Assurance that records received shall not be used for telemarketing or motor vehicle refinancing purposes.

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9	Sample of Polk Customers
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12	Fiscal Analysis - HB 2010

INTERIM TRANSPORTATION COMMITTEE - 1996
SB 632 - 1996

DRIVER'S PRIVACY PROTECTION ACT (DPPA)
Passed September 13, 1994/Effective September 13, 1997

**TITLE XXX - Protection of Privacy of
Information in State Motor Vehicle Records**

Permissible Uses
Section 2721, (b), (1) - (14)

Notes:

Notes:

Individual records sold by Kan., INK.

(11) Purchase of individual records if state provides opportunity to (the individual) to prohibit such disclosure.

Shall be disclosed for Motor Vehicle Safety Act, Clean Air Act, etc.

(12) Purchase of motor vehicle records sold in bulk for surveys and marketing if individuals are provided an opportunity to prohibit such use and survey and marketing are not directed at those individuals.

Polk purchases in bulk form from each state for vehicle manufacturer

Present Kansas statutes do not allow for marketing and surveys--36 states allow--14 states do not allow.

If state is in substantial non-compliance, beginning 9/13/97 can be fined \$5,000 per day.

Civil penalties if records used for purposes not intended.

Kan./Polk Contract

1. \$50/1,000
2. DOR/Kan., INK shall furnish
3. Weekly
4. Agreement on use
5. State audit
6. Motor vehicle records

Polk customers:

1. Auto industry
2. Direct targeted marketing.

Service provided to Kansans--for those who choose to receive!

Commercial means to opt-out of direct target marketing:

1. DMA
2. Buyer's choice.

HOUSE BILL No. 2010

By Special Committee on Transportation

12-17

10 AN ACT relating to the records of the division of vehicles; amending
11 K.S.A. 1996 Supp. 74-2012 and repealing the existing section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 1996 Supp. 74-2012 is hereby amended to read as
15 follows: 74-2012. (a) *All records of the division of vehicles shall be subject*
16 *to the provisions of the open records act except as otherwise provided*
17 *under the provisions of this section and by K.S.A. 1996 Supp. 74-2022,*
18 *and amendments thereto.*

19 (a) (b) All records of the division of vehicles relating to the physical
20 or mental condition of any person, to expungement or except as provided
21 further, any photographs maintained by the division of vehicles in con-
22 nection with the issuance of drivers' licenses **and nondrivers' identifi-**
23 **cation cards** shall be confidential. Photographs or digital images main-
24 tained by the division of vehicles in connection with the issuance of
25 drivers' licenses shall be available to law enforcement agencies for use in
26 criminal investigations. Records of the division relating to diversion agree-
27 ments for the purposes of K.S.A. 8-1567, 12-4415 and 22-2908, and
28 amendments thereto, shall be confidential and shall be disclosed by direct
29 computer access only to:

30 (1) A city, county or district attorney, for the purpose of determining
31 a person's eligibility for diversion;

32 (2) a municipal or district court, for the purpose of using the record
33 in connection with any matter before the court;

34 (3) a law enforcement agency, for the purpose of supplying the record
35 to a person authorized to obtain it under paragraph (1) or (2) of this
36 subsection; or

37 (4) an employer when a person is required to retain a commercial
38 driver's license due to the nature of such person's employment.

39 ~~All other records of the division of vehicles shall be subject to the~~
40 ~~provisions of the open records act except as otherwise provided by K.S.A.~~
41 ~~1996 Supp. 74-2022 and amendments thereto or this section.~~

42 (b) (c) ~~Lists of persons' names and addresses~~ *Personal information*
43 *contained in or derived from records of the division of vehicles shall not*

1 be sold, given or received for the purposes prohibited by K.S.A. 21-3914,
2 and amendments thereto, except that:

3 (1) The director of vehicles may provide to a requesting party, and a
4 requesting party may receive, such a list and ~~accompanying personal~~ in-
5 formation from public records of the division upon written certification
6 that the requesting party shall use the ~~list personal information~~ solely for
7 the purpose of: (A) Assisting manufacturers of motor vehicles in compil-
8 ing statistical reports or in notifying owners of vehicles believed to: (i)
9 Have safety-related defects, (ii) fail to comply with emission standards or
10 (iii) have any defect to be remedied at the expense of the manufacturer;
11 (B) assisting an insurer authorized to do business in this state, or the
12 insurer's authorized agent, in processing an application for, or renewal or
13 cancellation of, a motor vehicle liability insurance policy; ~~or~~ or (C) as-
14 sisting the selective service system in the maintenance of a list of persons
15 18 to 26 years of age in this state as required under the provisions of
16 section 3 of the federal military selective service act; ~~or (D) assisting~~
17 ~~businesses authorized to receive records under subparagraphs (A) or (B)~~
18 ~~of this paragraph in bulk distribution for surveys or marketing; if (i)~~
19 ~~Individuals are provided an opportunity to prohibit the disclosure of per-~~
20 ~~sonal information under subsection (g); and (ii) the information will be~~
21 ~~used, rented or sold solely for bulk distribution for surveys or marketing~~
22 ~~and that such surveys and marketing will not be directed at those indi-~~
23 ~~viduals who have requested under subsection (g) not be directed at them.~~

24 (2) Any law enforcement agency of this state which has access to
25 public records of the division may furnish to a requesting party, and a
26 requesting party may receive, such a list and accompanying information
27 from such records upon written certification that the requesting party
28 shall use the list solely for the purpose of assisting an insurer authorized
29 to do business in this state, or the insurer's authorized agent, in processing
30 an application for, or renewal or cancellation of, a motor vehicle liability
31 insurance policy.

32 ~~(e)~~ (d) If a law enforcement agency of this state furnishes information
33 to a requesting party pursuant to ~~paragraph (2) of subsection (b)(2)~~ (c),
34 the law enforcement agency shall charge the fee prescribed by the sec-
35 retary of revenue pursuant to K.S.A. 1996 Supp. 74-2022, and amend-
36 ments thereto, for any copies furnished and may charge an additional fee
37 to be retained by the law enforcement agency to cover its cost of providing
38 such copies. The fee prescribed pursuant to K.S.A. 1996 Supp. 74-2022,
39 and amendments thereto, shall be paid monthly to the secretary of rev-
40 enue and upon receipt thereof shall be deposited in the state treasury to
41 the credit of the electronic databases fee fund, except for the \$1 of the
42 fee for each record required to be credited to the highway patrol training
43 center fund under subsection ~~(e)~~ (f).

1 ~~(d)~~ (e) The secretary of revenue, the secretary's agents or employees,
2 the director of vehicles or the director's agents or employees shall not be
3 liable for damages caused by any negligent or wrongful act or omission
4 of a law enforcement agency in furnishing any information obtained from
5 records of the division of vehicles.

6 ~~(e)~~ (f) A fee in an amount fixed by the secretary of revenue pursuant
7 to K.S.A. 1996 Supp. 74-2022, and amendments thereto, of not less than
8 \$2 for each request for information in the public records of the division
9 concerning any vehicle or licensed driver shall be charged by the division,
10 except that the director may charge a lesser fee pursuant to a contract
11 between the secretary of revenue and any person to whom the director
12 is authorized to furnish information under *paragraph (1) of subsection*
13 ~~(b)~~ (c), and such fee shall not be less than the cost of production or
14 reproduction of any information requested. Except for the fees charged
15 pursuant to a contract for title and registration records on vehicles au-
16 thorized by this subsection, \$1 shall be credited to the highway patrol
17 training center fund for each record.

18 (g) *The division of vehicles shall implement methods and procedures*
19 *to ensure that individuals are provided an opportunity, in a clear and*
20 *conspicuous manner, to prohibit the disclosure of personal information*
21 *collected by the division of vehicles, except under the following situations:*

22 (1) *For use by any government agency, including any court or law*
23 *enforcement agency, in carrying out its functions, or any private person*
24 *or entity acting on behalf of a federal, state or local agency in carrying*
25 *out its functions;*

26 (2) *for use in connection with matters of motor vehicle or driver safety*
27 *and theft; motor vehicle emissions; motor vehicle product alterations; re-*
28 *calls, or advisories; performance monitoring of motor vehicles, motor ve-*
29 *hicle parts and dealers; motor vehicle market research activities, including*
30 *survey research; and removal of nonowner records from the original*
31 *owner records of motor vehicle manufacturers;*

32 (3) *for use in the normal course of business by a legitimate business*
33 *or its agents, employees or contractors, but only:*

34 (A) *To verify the accuracy of personal information submitted by the*
35 *individual to the business or its agents, employees or contractors; and*

36 (B) *if such information as so submitted is not correct or is no longer*
37 *correct, to obtain the correct information, but only for the purposes of*
38 *preventing fraud by, pursuing legal remedies against, or recovering on a*
39 *debt or security interest against, the individual;*

40 (4) *for use in connection with any civil, criminal, administrative or*
41 *arbitral proceeding in any federal, state or local court or agency or before*
42 *any self-regulatory body, including the service of process, investigation in*
43 *anticipation of litigation, and the execution or enforcement of judgments*

- 1 *and orders, or pursuant to an order of a federal, state or local court;*
2 *(5) for use in research activities, and for use in producing statistical*
3 *reports, so long as the personal information is not published, redisclosed*
4 *or used to contact individuals;*
5 *(6) for use by any insurer or insurance support organization, or by a*
6 *self-insured entity, or its agents, employees or contractors, in connection*
7 *with claims investigation activities, antifraud activities, rating or under-*
8 *writing;*
9 *(7) for use in providing notice to the owners of towed or impounded*
10 *vehicles;*
11 *(8) for use by any licensed private investigative agency or licensed*
12 *security service for any purpose permitted under this subsection;*
13 *(9) for use by any employer or its agent or insurer to obtain or verify*
14 *information relating to a holder of a commercial driver's license that is*
15 *required under the Commercial Motor Vehicle Safety Act of 1986 (49*
16 *U.S.C. App. 2710 et seq.);*
17 *(10) for use by any requester, if the requester demonstrates it has*
18 *obtained the written consent of the individual to whom the information*
19 *pertains.*
20 *(h) As used in this section "personal information" means information*
21 *that identifies a person, driver identification number, name, address, in-*
22 *cluding information on vehicular accidents, driving or equipment-related*
23 *violations, but shall not include such information considered confidential*
24 *under subsection (b).*
25 ~~(i)~~ *(i) The secretary of revenue may adopt such rules and regulations*
26 *as are necessary to implement the provisions of this section.*
27 *Sec. 2. K.S.A. 1996 Supp. 74-2012 is hereby repealed.*
28 *Sec. 3. This act shall take effect and be in force from and after its*
29 *publication in the statute book.*

HOUSE BILL No. 2010

By Special Committee on Transportation

12-17

10 AN ACT relating to the records of the division of vehicles; amending
11 K.S.A. 1996 Supp. 74-2012 and repealing the existing section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 1996 Supp. 74-2012 is hereby amended to read as
15 follows: 74-2012. (a) All records of the division of vehicles shall be subject
16 to the provisions of the open records act except as otherwise provided
17 under the provisions of this section and by K.S.A. 1996 Supp. 74-2022,
18 and amendments thereto.

19 ~~(a)~~ (b) All records of the division of vehicles relating to the physical
20 or mental condition of any person, to expungement or except as provided
21 further, any photographs maintained by the division of vehicles in con-
22 nection with the issuance of drivers' licenses and nondrivers' identifi-
23 cation cards shall be confidential. Photographs or digital images main-
24 tained by the division of vehicles in connection with the issuance of
25 drivers' licenses shall be available to law enforcement agencies for use in
26 criminal investigations. Records of the division relating to diversion agree-
27 ments for the purposes of K.S.A. 8-1567, 12-4415 and 22-2908, and
28 amendments thereto, shall be confidential and shall be disclosed by direct
29 computer access only to:

30 (1) A city, county or district attorney, for the purpose of determining
31 a person's eligibility for diversion;

32 (2) a municipal or district court, for the purpose of using the record
33 in connection with any matter before the court;

34 (3) a law enforcement agency, for the purpose of supplying the record
35 to a person authorized to obtain it under paragraph (1) or (2) of this
36 subsection; or

37 (4) an employer when a person is required to retain a commercial
38 driver's license due to the nature of such person's employment.

39 All other records of the division of vehicles shall be subject to the
40 provisions of the open records act except as otherwise provided by K.S.A.
41 1996 Supp. 74-2022 and amendments thereto or this section.

42 ~~(b)~~ (c) Lists of persons' names and addresses ~~Personal information~~
43 ~~contained in or derived from records of the division of vehicles shall not~~

← INSERT ATTACHMENT "A"

1 ~~be sold, given or received for the purposes prohibited by K.S.A. 21-3914,~~
 2 ~~and amendments thereto, except that:~~

3 ~~(1) The director of vehicles may provide to a requesting party, and a~~
 4 ~~requesting party may receive, such a list and accompanying personal in-~~
 5 ~~formation from public records of the division upon written certification~~
 6 ~~that the requesting party shall use the list personal information solely for~~
 7 ~~the purpose of: (A) assisting manufacturers of motor vehicles in compil-~~
 8 ~~ing statistical reports or in notifying owners of vehicles believed to: (i)~~
 9 ~~Have safety-related defects, (ii) fail to comply with emission standards or~~
 10 ~~(iii) have any defect to be remedied at the expense of the manufacturer;~~
 11 ~~(B) assisting an insurer authorized to do business in this state, or the~~
 12 ~~insurer's authorized agent, in processing an application for, or renewal or~~
 13 ~~cancellation of, a motor vehicle liability insurance policy; or or (C) as-~~
 14 ~~sisting the selective service system in the maintenance of a list of persons~~
 15 ~~18 to 26 years of age in this state as required under the provisions of~~
 16 ~~section 3 of the federal military selective service act; or (D) assisting~~
 17 ~~businesses authorized to receive records under subparagraphs (A) or (B)~~
 18 ~~of this paragraph in bulk distribution for surveys or marketing; if (i)~~
 19 ~~individuals are provided an opportunity to prohibit the disclosure of per-~~
 20 ~~sonal information under subsection (2); and (ii) the information will be~~
 21 ~~used, rented or sold solely for bulk distribution for surveys or marketing~~
 22 ~~and that such surveys and marketing will not be directed at those indi-~~
 23 ~~viduals who have requested under subsection (2) not be directed at them.~~

24 **(2)** Any law enforcement agency of this state which has access to
 25 public records of the division may furnish to a requesting party, and a
 26 requesting party may receive, such a list and accompanying information
 27 from such records upon written certification that the requesting party
 28 shall use the list solely for the purpose of assisting an insurer authorized
 29 to do business in this state, or the insurer's authorized agent, in processing
 30 an application for, or renewal or cancellation of, a motor vehicle liability
 31 insurance policy.

32 ~~(e) (d)~~ If a law enforcement agency of this state furnishes information
 33 to a requesting party pursuant to paragraph **(2)** of subsection ~~(b)(2)~~ (c),
 34 the law enforcement agency shall charge the fee prescribed by the sec-
 35 retary of revenue pursuant to K.S.A. 1996 Supp. 74-2022, and amend-
 36 ments thereto, for any copies furnished and may charge an additional fee
 37 to be retained by the law enforcement agency to cover its cost of providing
 38 such copies. The fee prescribed pursuant to K.S.A. 1996 Supp. 74-2022,
 39 and amendments thereto, shall be paid monthly to the secretary of rev-
 40 enue and upon receipt thereof shall be deposited in the state treasury to
 41 the credit of the electronic databases fee fund, except for the \$1 of the
 42 fee for each record required to be credited to the highway patrol training
 43 center fund under subsection ~~(e)~~ (f).

ATTACHMENT "A"

(c) Information, including personal information, contained in or derived from records of the division of vehicles shall not be sold, given or received for the purposes prohibited by K.S.A. 21-3914, and amendments thereto, except that:

(1) The director of vehicles may provide to a requesting party, and a requesting party may receive information, including personal information* from title and registration records of the division upon written certification that the requesting party shall use such information solely for the purpose of:

(A) Assisting manufacturers of motor vehicles in compiling statistical reports or in notifying owners of vehicles believed to:

(i) Have safety-related defects;

(ii) fail to comply with emission standards; or

(iii) have any defect to be remedied at the expense of the manufacturer; or

(B) assisting businesses authorized to receive records under subparagraph (A) of this paragraph in bulk distribution for surveys or marketing, if:

(i) Individuals are provided an opportunity to prohibit the disclosure of personal information under subsection (g); and

(ii) the information will be used, rented or sold solely for bulk distribution for surveys or marketing and that such surveys and marketing will not be directed at those individuals who have requested under subsection (g) not be directed at them.

(2) The director of vehicles may provide to a requesting party, and a requesting party may receive information, including personal information, from public records of the division upon written certification that the requesting party shall use such information solely for the purpose of:

(A) Assisting an insurer authorized to do business in this state, or the insurer's authorized agent, in processing an application for, or renewal or cancellation of, a motor vehicle liability insurance policy; or

(B) assisting the selective service system in the maintenance of a list of persons 18 to 26 years of age in this state as required under the provisions of section 3 of the federal military selective service act.

* LIMITED TO NAME AND ADDRESS

1 ~~(d)~~ (e) The secretary of revenue, the secretary's agents or employees,
2 the director of vehicles or the director's agents or employees shall not be
3 liable for damages caused by any negligent or wrongful act or omission
4 of a law enforcement agency in furnishing any information obtained from
5 records of the division of vehicles.

6 ~~(e)~~ (f) A fee in an amount fixed by the secretary of revenue pursuant
7 to K.S.A. 1996 Supp. 74-2022, and amendments thereto, of not less than
8 \$2 for each request for information in the public records of the division
9 concerning any vehicle or licensed driver shall be charged by the division,
10 except that the director may charge a lesser fee pursuant to a contract
11 between the secretary of revenue and any person to whom the director
12 is authorized to furnish information under paragraph (1) of subsection
13 ~~(c)~~, and such fee shall not be less than the cost of production or
14 reproduction of any information requested. Except for the fees charged
15 pursuant to a contract for title and registration records on vehicles au-
16 thorized by this subsection, \$1 shall be credited to the highway patrol
17 training center fund for each record.

18 (g) The division of vehicles shall implement methods and procedures
19 to ensure that individuals are provided an opportunity, in a clear and
20 conspicuous manner, to prohibit the disclosure of personal information
21 collected by the division of vehicles, except under the following situations:

22 (1) For use by any government agency, including any court or law
23 enforcement agency, in carrying out its functions, or any private person
24 or entity acting on behalf of a federal, state or local agency in carrying
25 out its functions;

26 (2) for use in connection with matters of motor vehicle or driver safety
27 and theft; motor vehicle emissions; motor vehicle product alterations; re-
28 calls, or advisories; performance monitoring of motor vehicles, motor ve-
29 hicle parts and dealers; motor vehicle market research activities, including
30 survey research; and removal of nonowner records from the original
31 owner records of motor vehicle manufacturers;

32 (3) for use in the normal course of business by a legitimate business
33 or its agents, employees or contractors, but only:

34 (A) To verify the accuracy of personal information submitted by the
35 individual to the business or its agents, employees or contractors; and

36 (B) if such information as so submitted is not correct or is no longer
37 correct, to obtain the correct information, but only for the purposes of
38 preventing fraud by, pursuing legal remedies against, or recovering on a
39 debt or security interest against, the individual;

40 (4) for use in connection with any civil, criminal, administrative or
41 arbitral proceeding in any federal, state or local court or agency or before
42 any self-regulatory body, including the service of process, investigation in
43 anticipation of litigation, and the execution or enforcement of judgments

PARAGRAPHS (1) AND (2)

- 1 and orders, or pursuant to an order of a federal, state or local court;
- 2 (5) for use in research activities, and for use in producing statistical
- 3 reports, so long as the personal information is not published, redisclosed
- 4 or used to contact individuals;
- 5 (6) for use by any insurer or insurance support organization, or by a
- 6 self-insured entity, or its agents, employees or contractors, in connection
- 7 with claims investigation activities, antifraud activities, rating or under-
- 8 writing;
- 9 (7) for use in providing notice to the owners of towed or impounded
- 10 vehicles;
- 11 (8) for use by any licensed private investigative agency or licensed
- 12 security service for any purpose permitted under this subsection;
- 13 (9) for use by any employer or its agent or insurer to obtain or verify
- 14 information relating to a holder of a commercial driver's license that is
- 15 required under the Commercial Motor Vehicle Safety Act of 1986 (49
- 16 U.S.C. App. 2710 et seq.);
- 17 (10) for use by any requester, if the requester demonstrates it has
- 18 obtained the written consent of the individual to whom the information
- 19 pertains.

20 ~~(h) As used in this section "personal information" means information~~
 21 ~~that identifies a person, driver identification number, name, address, in-~~
 22 ~~cluding information on vehicular accidents, driving or equipment related~~
 23 ~~violations, but shall not include such information considered confidential~~
 24 ~~under subsection (b).~~

← INSERT ATTACHMENT "B"

25 (i) The secretary of revenue may adopt such rules and regulations
 26 as are necessary to implement the provisions of this section.

(j)

27 Sec. 2. K.S.A. 1996 Supp. 74-2012 is hereby repealed.
 28 Sec. 3. This act shall take effect and be in force from and after its
 29 publication in the statute book.

ATTACHMENT "B"

(h) No information, including personal information, derived from the records of the division of vehicles shall be used, rented or resold for telemarketing purposes or for motor vehicle refinancing purposes.

(i) As used in this section:

(1) "Personal information" means information that identifies a person, identification number, name, address, including information on vehicular accidents, driving or equipment-related violations, but shall not include such information considered confidential under subsection (b);

(2) "survey" means the contacting of individuals by direct mail to assess their opinion on products or services; and

(3) "marketing" means the contacting of individuals by direct mail with product information, incentives and service offerings which are targeted at individuals' likings and requests.

1 TITLE XXX---PROTECTION OF PRIVACY
2 OF INFORMATION IN STATE MOTOR
3 VEHICLE RECORDS
4

5 SEC 300001. SHORT TITLE.

6 This title may be cited as the "Drivers' Privacy Protection Act of 1994".
7

8 SEC 300002. PROHIBITION ON RELEASE AND USE OF CERTAIN
9 PERSONAL INFORMATION FROM STATE MOTOR VEHICLE
10 RECORDS.
11

12 (a) IN GENERAL.---Title 18, United States Code, is amended by inserting
13 after chapter 121 the following new chapter:
14

15 "CHAPTER 123---PROHIBITION ON RELEASE AND USE OF
16 CERTAIN PERSONAL INFORMATION FROM STATE
17 MOTOR VEHICLE RECORDS
18

19 "§2721. Prohibition on release and use of certain personal information from
20 State motor vehicle records

21 "(a) IN GENERAL.---Except as provided in subsection (b), a State department of motor
22 vehicles, and any officer, employee, or contractor, thereof, shall not knowingly disclose or
23 otherwise make available to any person or entity personal information about any individual
24 obtained by the department in connection with a motor vehicle record.

25 "(b) PERMISSIBLE USES.---Personal information referred to in subsection (a) shall be
26 disclosed for use in connection with matters of motor vehicle or driver safety and theft, motor
27 vehicle emissions, motor vehicle product alterations, recalls, or advisories, performance monitoring
28 of motor vehicle and dealers by motor vehicle manufacturers and removal of non-owner records
29 from the original owner records of motor vehicle manufacturers to carry out the purposes of the
30 Automobile Information Disclosure Act, the Motor Vehicle Information and Cost Saving Act, the
31 National Traffic and Motor Vehicle Safety Act of 1966, the Anti-Car Theft Act of 1992, and the
32 Clean Air Act, and may be disclosed as follows:
33

34 "(1) For the use by any government agency, including any court or law
35 enforcement agency, in carrying out its functions, or any private person or entity
36 acting on behalf of a Federal, State, or local agency in carrying out its functions.

37 "(2) For the use in connection with matters of motor vehicle or driver safety and
38 theft; motor vehicle emissions; motor vehicle product alterations, recalls, or
39 advisories; performance monitoring of motor vehicles, motor vehicle parts and
40 dealers; motor vehicle market research activities, including survey research; and
41 removal of non-owner records from the original owner records of motor vehicle
42 manufacturers.

43 "(3) For the use in the normal course of business by a legitimate business or its
44 agents, employees, or contractors, but only---

45 "(A) to verify the accuracy of personal information submitted by the
individual to the business or its agents, employees, or contractors; and

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"(B) if such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud, by pursuing legal remedies against, or recovering on a debt or security interest against, the individual.

"(4) For the use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or 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 a Federal, State, or local court.

"(5) 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.

"(6) 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.

"(7) For use in providing notice to the owners of towed or impounded vehicles.

"(8) For use by any licensed private investigative agency or licensed security service for any purpose permitted under this subsection.

"(9) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. App. 2710 et seq.).

"(10) For use in connection with the operation of private toll transportation facilities.

"(11) For any other use in response to requests for individual motor vehicle records if the motor vehicle department has provided in a clear and conspicuous manner on forms for issuance or renewal of operator's permits, titles, registrations, or identification cards, notice that personal information collected by the department may be disclosed to any business or person, and has provided in a clear and conspicuous manner on such forms an opportunity to prohibit such disclosures.

"(12) For bulk distribution for surveys, marketing or solicitations if the motor vehicle department has implemented methods and procedures to ensure that—

"(A) individuals are provided an opportunity, in a clear and conspicuous manner, to prohibit such uses; and

"(B) the information will be used, rented, or sold solely for bulk distribution for surveys, marketing, and solicitations, and that surveys, marketing, and solicitations will not be directed at those individuals who have requested in a timely fashion that they not be directed at them.

"(13) For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains.

"(14) 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.

"(c) RESALE OR REDISCULOSURE.—An authorized recipient of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b) (but not for uses under subsection (b) (11) or (12)). An authorized recipient under subsection (b)(11) may resell or redisclose personal information for any purpose. An authorized recipient under subsection (b)(12) may resell or redisclose personal information pursuant to subsection (b)(12). Any authorized recipient (except a recipient under subsection (b)(11)) that resells or rediscloses personal information covered by this title must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request.

"(d) WAIVER PROCEDURES.—A State motor vehicle department may establish and carry out procedures under which the department or its agents, upon receiving a request for personal information that does not fall within one of the exceptions in subsection (b), may mail a copy of the request to the individual about whom the information was requested, informing such individual of the request, together with a statement to the effect that the information will not be released unless the individual waives such individual's right to privacy under this section.

1 "§ 2722. Additional unlawful acts

2 "(a) PROCUREMENT FOR UNLAWFUL PURPOSE.--It shall be unlawful for any person
3 knowingly to obtain or disclose personal information, from a motor vehicle record, for any use not
4 permitted under section 2721(b) of this title

5 "(b) FALSE REPRESENTATION.--It shall be unlawful for any person to make false
6 representation to obtain any personal information from an individual's motor vehicle record.
7

8 "§ 2723. Penalties

9 "(a) CRIMINAL FINE.--A person who knowingly violates this chapter shall be fined under
10 this title.

11 "(b) VIOLATIONS BY STATE DEPARTMENT OF MOTOR VEHICLES.--Any State department
12 of motor vehicles that has a policy or practice of substantial noncompliance with this chapter shall be
13 subject to a civil penalty imposed by the Attorney General of not more than \$5,000 a day for each
14 day of substantial noncompliance.
15

16 "§ 2724. Civil action

17 "(a) CAUSE OF ACTION.--A person who knowingly obtains, discloses or uses personal
18 information, from a motor vehicle record, for a purpose not permitted under this chapter shall be
19 liable to the individual to whom the information pertains, who may bring a civil action in a United
20 States district court.

21 "(b) REMEDIES.--The court may award---

- 22 "(1) actual damages, but not less than liquidated damages in the amount of \$2,500;
- 23 "(2) punitive damages upon proof of willful or reckless disregard of law;
- 24 "(3) reasonable attorneys' fees and other litigation costs reasonably incurred; and
- 25 "(4) such other preliminary and equitable relief as the court determines to be
26 appropriate.
27

28 "§ 2725. DEFINITIONS

29 "In this chapter---

30 "(1) 'motor vehicle record' means any record that pertains to a motor vehicle
31 operator's permit, motor vehicle title, motor vehicle registration, or identification
32 card issued by a department of motor vehicles;

33 "(2) 'person' means an individual, organization or entity, but does not include a
34 State or agency thereof; and

35 "(3) 'personal information' means information that identifies an individual,
36 including an individual's photograph, social security number, driver identification
37 number, name, address (but not the 5-digit zip code), telephone number, and medical or
38 disability information, but does not include information on vehicular accidents, driving
39 violations, and driver's status."

40 (b) CLERICAL AMENDMENT.--The table of parts at the beginning of part I of title 18,
41 United States Code, is amended by adding at the end the following new item:

42 "123. Prohibition on release and use of certain personal information from State motor vehicle records 2271"
43

44 *SEC. 300003. EFFECTIVE DATE.*

45 The amendments made by section 300002 shall become effective on the date that is 3 years
46 after the date of enactment of this Act. After the effective date, if a State has implemented a
47 procedure under section 2721(b) (11) and (12) of title 18, United States Code, as added by section
48 2902, for prohibiting disclosures or uses of personal information, and the procedure otherwise meets
49 the requirements of subsection (b) (11) and (12), the State shall be in compliance with subsection
50 (b) (11) and (12) even if the procedure is not available to individuals until they renew their license,
51 title, registration or identification card, so long as the State provides some other procedure for
52 individuals to contact the State on their own initiative to prohibit such uses or disclosures. Prior to
53 the effective date, personal information covered by the amendment made by section 300002 may be
54 released consistent with State law or practice.

217

THE POLK COMPANY - KANSAS PRESENCE

Facilities: Hutchinson, Kansas - print and bind all city directories for the United States
Manhattan, Kansas - distribution center for city directories
Lawrence, Kansas - marketing office

Employment: Approximately 200 employees

Annual payroll: \$2,000,000.00

Withholding taxes: \$ 100,000.00

Property taxes: \$ 42,000.00

Purchases from
State: \$ 100,000.00 (1996)

A G R E E M E N T

This Agreement is between the Kansas Department of Revenue (hereinafter called the "Department") and R. L. Polk & Co., a Delaware corporation with its principal office in the city of Detroit, Wayne County, Michigan (hereinafter called "Polk"), and The Information Network of Kansas, Inc., a public instrumentality created by Kansas law (K.S.A. 74-9301 et seq.), (hereinafter called "INK").

WHEREAS, motor vehicle registration and title records are subject to K.S.A. 74-2012, as amended, and may be furnished for the purpose of providing information to motor vehicle manufacturers; and

WHEREAS, pursuant to K.S.A. 21-3914, motor vehicle registration and title records shall not knowingly be sold, given or received for the purpose of selling or offering for sale any property or service to persons listed therein, any list of names and addresses contained in or derived from public records except names and addresses from public records of the Division of Vehicles obtained pursuant to K.S.A. 74-2012, as amended;

WHEREAS, Polk desires to purchase copies of said records now and in subsequent years; and

WHEREAS, the parties hereto desire to follow the spirit as well as the letter of the legislative mandate as aforesaid and;

NOW, THEREFORE, in consideration of the mutual covenants and agreements for the amounts hereinafter provided to be paid by Polk, the parties hereto hereby agree as follows:

1. The Department and INK shall furnish to Polk all title and registration record information for all types of vehicles at a cost of \$50.00 per thousand records, and will be delivered to Polk on a weekly basis.
2. Polk shall request records directly from INK via magnetic tape, a dial-up 9.6Kbps to 28.8 Kbps asynchronous direct telecommunications line. All expenses associated with requesting or receiving records shall be the responsibility of Polk. In the event that Polk selects to receive the records via magnetic tapes, Polk shall furnish INK all magnetic tapes and/or tape cartridges and shall absorb all shipping charges.
3. Shipments by the Department and INK shall be made to the following address:

The Polk Company
Attn: Source Receipts Department
301B Industrial Blvd.
Conway, AR 72032-7168
4. The magnetic tapes and/or tape cartridges provided by Polk shall be shipped to:

INK
400 SW 8th Ave., Ste. 106
Topeka, KS 66612

5. Payment shall be provided to KDOR within twenty (20) days from the date of the invoice to the following address:

Kansas Department of Revenue
Budget Purchasing
Docking State Office Bldg., 2nd Floor
915 SW Harrison
Topeka, KS 66612

6. All invoices from INK shall be directed to:

R. L. Polk & Co.
Attn: Dennis Haake
400 Pike Street
Cincinnati, OH 45202

7. Polk agrees that the title and registration information furnished by Department and/or INK shall be used by Polk solely for the purpose of: assisting manufacturers of motor vehicles in compiling statistical reports or in notifying owners of vehicles believed to: (i) have safety-related defects, (ii) fail to comply with emission standards, or (iii) have any defect to be remedied at the expense of the manufacturer.
8. Polk shall protect record information by not providing record name(s) and address information except upon written request from a bona fide law enforcement agency, and vehicle manufacturers as necessary in relation to a recall program.
9. The Department reserves the right to audit Polk's records regarding its utilization of the motor vehicle registration and title records purchased for compliance with provisions of Kansas law.
10. This Agreement shall commence October 1, 1996, and expire only upon notice of termination.
11. This Agreement may be terminated only by an instrument in writing, signed by a duly authorized representative of any party hereto. This Agreement shall be immediately terminated upon any breach of any covenant by any party without advance notification, termination being completed by an instrument in writing signed by a duly authorized representative of the aggrieved party and deposited with the United States Postal Service correctly addressed and postage prepaid.
12. This Agreement may be changed, modified or amended at any time after thirty (30) days notice by an instrument in writing, signed by duly authorized representatives of all parties hereto.
13. The Department reserves the right to renegotiate the terms of this contract at any time. All prior Agreements, oral or written, between the parties are rescinded and canceled as of the date of execution of this Agreement.
14. The provisions found in Contractual Provisions Attachment (Form DA-146a), which is attached hereto, are hereby incorporated in this Agreement and made a part hereof.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized officials or officers.

State of Kansas
Department of Revenue

BY: _____ DATE: _____
John LaFaver, Director

R. L. Polk & Co.

BY: _____ DATE: _____
Larry G. Majerus
Vice President
Government Relations

2-21

KANSAS DATA ELEMENTS

ACQUISITION CODE
 APPLICATION DATE
 BODY STYLE
 DATE VEHICLE ENTER STATE
 EMPTY WEIGHT
 EXPIRATION DATE
 FIFTH NAME
 FIRST NAME 1
 FIRST NAME 2
 FIRST NAME 3
 FIRST NAME 4
 FIRST NAME 5
 FOURTH NAME
 GROSS WEIGHT
 LAST NAME 1
 LAST NAME 2
 LAST NAME 3
 LAST NAME 4
 LAST NAME 5
 LICENSE NUMBER
 LIENHOLDER ADDRESS 1
 LIENHOLDER ADDRESS 2
 LIENHOLDER CITY 1
 LIENHOLDER CITY 2
 LIENHOLDER NAME 1
 LIENHOLDER NAME 2
 LIENHOLDER STATE 1
 LIENHOLDER STATE 2
 LIENHOLDER ZIP CODE BASE 1
 LIENHOLDER ZIP CODE BASE 2
 LIENHOLDER ZIP CODE
 EXTENSION 1
 LIENHOLDER ZIP CODE
 EXTENSION 2
 MAKE
 MIDDLE INITIAL 1
 MIDDLE INITIAL 2
 MIDDLE INITIAL 3
 MIDDLE INITIAL 4
 MIDDLE INITIAL 5
 MILEAGE
 MODEL
 NON-HIGHWAY

ODOMETER
 ODOMETER CODE
 OWNER ADDRESS
 OWNER CITY
 OWNER CODE
 OWNER NAME
 OWNER NAME 1
 OWNER NAME 2
 OWNER NAME 3
 OWNER NAME 4
 OWNER NAME 5
 OWNER RELATIONSHIP 1
 OWNER RELATIONSHIP 2
 OWNER RELATIONSHIP 3
 OWNER RELATIONSHIP 4
 OWNER RELATIONSHIP 5
 OWNER STATE
 OWNER ZIP CODE BASE
 OWNER ZIP CODE EXTENSION
 PREVIOUS PLATE NUMBER
 PREVIOUS REGISTRATION
 TYPE
 PURCHASE DATE
 REGISTRATION COUNTY
 REGISTRATION TYPE
 RELATION CODE 1
 RELATION CODE 2
 RELATION CODE 3
 RELATION CODE 4
 RELATION CODE 5
 SECOND NAME
 SPECIAL MAIL ADDRESS
 SPECIAL MAIL CITY
 SPECIAL MAIL NAME
 SPECIAL MAIL STATE
 SPECIAL MAIL ZIP CODE BASE
 SPECIAL MAIL ZIP CODE
 EXTENSION
 STATE
 STREET ADDRESS
 SUFFIX
 SUFFIX 1
 SUFFIX 2

SUFFIX 4
SUFFIX 5
TAX CLASS CODE
TAX CLASS/EXEMPT
THIRD NAME
TITLE ISSUE DATE
TITLE NON-HIGHWAY STATE
TITLE NUMBER
TITLE TYPE
TOWN
TRANSACTION DATE
TRANSACTION ID
TRANSACTION TYPE
TRUCK TYPE REGISTRATION
VEHICLE STATUS
VEHICLE TYPE
VIN
WEIGHT
YEAR MODEL
ZIP CODE

Record Cost
Ranked by Price

1. \$100/M	47. \$1.65/M
2. \$60/M	48. \$1.50/M
3. KANSAS \$50/M	49. \$.50/M
4. \$50/M	50. \$.49/M
5. \$48/M	51. \$.49/M
6. \$45/M	
7. \$35/M	
8. \$34/M	
9. \$30/M	
10. \$26/M	
11. \$25/M	
12. \$25/M	
13. \$25/M	
14. \$24/M	
15. \$22.50/M	
16. \$22.50/M	
17. \$22/M	
18. \$22/M	
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20. \$20.50/M	
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22. \$20/M	
23. \$20/M	
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35. \$16/M	
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38. \$11.70/M	
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40. \$10/M	
41. \$10/M	
42. \$7/M	
43. \$4/M	
44. \$2.30/M	
45. \$2.30/M	

PARTIAL POLK CUSTOMER LIST

Lands' End	Brooks Brothers
Time Life	National Wildlife Federation
Chrysler	Blockbuster
Globe Life	Goodyear
AC Delco	Allied Signal
Exxon	Spiegel
J. Crew	UNICEF
General Motors Corporation	Ford Motor Company
Toyota	Mutual of Omaha
Firestone	Autozone
Michelin	L.L. Bean

2-25

JOHN C. PETERSON
KANSAS GOVERNMENTAL CONSULTING

Wichita Office

THE AMIDON HOUSE
1005 N. MARKET
WICHITA, KANSAS 67214-2911
(316) 263-4987
FAX (316) 263-4992

Kansas City Office

10200 STATE LINE, SUITE 230
LEAWOOD, KANSAS 66206-2375
(913) 381-6876
FAX (913) 381-6965



1206 WEST 10TH
TOPEKA, KANSAS 66604-1291
(913) 233-1903
FAX (913) 233-3518

Please Reply to Topeka Office

January 29, 1997

To: Representative Herman Dillon

From: Norman R. Sherbert and John C. Peterson
Representing: The Polk Company

Subject: HB 2010 (1997)
Driver's Privacy Protection Act (DPPA) Compliance

We would first like to thank you for your attentiveness on the subject matter during the recent Committee hearing. Our position on this Bill continues to be complete support for the intent of this proposed legislation as recommended by the Interim Special Committee on Transportation, and includes both aspects of the Bill:

1. Implementation of the DPPA, and
2. Inclusion of use of bulk data distribution for marketing and survey on a limited basis.

We were quite disappointed with some of the testimony which revealed apparent misunderstanding on the particulars of the Federal Act, the intent of the proposed legislation, the responsibility and duty of the Kansas General Assembly to continue to review statutes for applicability and currentness, the non-intent to compete with the state or state quasi agencies in the sale of records, and the role of direct target marketing to meet the needs of a segment of the retail buying public in Kansas.

In the following, we will speak to some of the stated objections to HB 1020 ---

- A. "Market and Survey are not defined" --

Within the Industry the terms are clearly understood. "Marketing and Survey" can be defined within the context of the Bill and we are ready to do that if the Committee so decides.

- B. "This information will be used to expand telecommunications"--

This Bill deals with motor vehicle records only. The Polk Company only obtains motor vehicle records (not individual records such as phone numbers, social

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security numbers, age, weight, eye color, etc.) The Bill can be clarified, at the pleasure of the Committee, to assure that marketing and survey does not include "telemarketing".

- C. "There is an apparent paradox in HB 2010" and "totally unrelated to Federal Law"---

There is no misunderstanding as to the intent of this Bill. Present Kansas statutes do not allow the use of bulk data for marketing and survey purposes. The DPPA specifically states in Chapter 123, Section 2721 that permissible use include

"(12) For bulk distribution for survey marketing or solicitation if the motor vehicle department has implemented methods and procedures to ensure that:

- a. Individuals are provided an opportunity, in a clear and conspicuous manner, to prohibit such uses, and
- b. The information will be used, rented, or sold solely for bulk distribution for surveys, marketing, and solicitation, and that surveys, marketing and solicitation will not be directed at those individuals who have requested in a timely fashion that they not be directed at them."

The DPPA therefore presents an opportunity for states to review their statutes in that regard and, since the individual citizen would now ultimately determine the status and use of their records for marketing and survey purposes. It would appear that the Legislature should allow those individuals who want direct targeted mailings to receive that information. There is a segment of the society in Kansas that use and depend on that type of literature in their buying decisions and habits. This is the time to consider the package (i.e. DPPA, and marketing and survey) as a whole.

- D. "The Kansas Legislature---promised citizens---to protect their privacy"---

This Bill in fact protects individual information and gives the individual, not government, the decision on how their information is used. Actually this is the ultimate in freedom of choice. And, this legislative

body has the authority and right to review existing statutes as to their present day applicability. Clearly a majority of all Bills considered in a session are to amend existing law.

- E. "The negative impact---is estimated to be \$1.2 million"

There is absolutely no intent of business and industry to compete with the state (or quasi agency) in the sale of records. The Polk Company does not and will not sell individual records. We are willing to negotiate language to assure that intent. In retrospect we also believe that Government should not compete with commerce and the "Mission Statement" of INK (i.e. "--to achieve a higher quality of life and standard of living, by fostering economic vitality statewide--") supports that philosophy. We would hope that the purpose of objecting to this legislation is not to compete with Commerce.

We also feel that there needs to be a justification supplied for the suggested loss in revenue of \$1.2 million. We need to understand where INK feels industry would compete for sales so we can be sure to clarify a "non-competitve" situation within the language of the Bill. This is also necessary because the Fiscal Note letter by the Division of the Budget suggests the "potential for a significant impact--depending on how the network fares in competition with other vendors---." The work "depending" is key and we need to assure that industry will not compete for sale of Kansas records.

- F. "We object to marketeers flooding the market with junk mail"--- (all meant in a negative term)

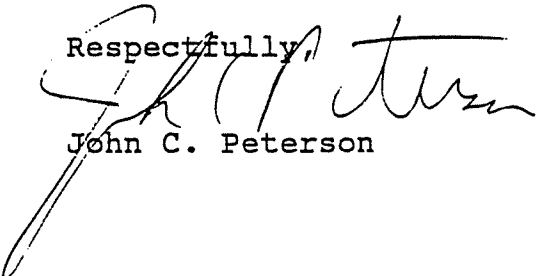
The Polk Company is probably the most respected company of its kind and extends back some 120 + years. Our clients include companies around the world the like of General Motors, Ford, Catapillar, John Deere, L.L. Bean, Goodyear, Safeway, UNICEF, Exxon, etc. We have substantial presence in Kansas with approximately 200 employees, \$2.3 million payroll, approximately \$100,000 withholding taxes, property taxes of \$42,000, and data purchase from Kansas of approximately \$100,000 annually. We provide a needed service to our clients who in turn provide important information to the citizens of Kansas to assist in auto safety, emission controls, and now hopefully educated buying decisions. We highly object to be portrayed as something other than a highly

respected and responsible business and segment of our society. Our record speaks for itself.


The Polk Company also understands the position of the Kansas Highway Patrol. We believe that if we can define a "non-compete" situation for sales of records by industry, the state could in fact recognize increased revenue when "marketing and survey" is allowed. And, the Academy in fact could recognize increased financial support. With respect to requests made by the Kansas Press Association and the Services for the Blind, we take no position and will recognize the final desires of the Committee in that regard.

We appreciate the fairness of Chairman Hayzlett during the Hearings and respect his decision to appoint a Sub-Committee to review this matter. We are committed to work with the Sub-Committee to address the questions and concerns presented during the hearing, and stand ready to negotiate language which we feel will resolve the differences.

Respectfully,


John C. Peterson

Respectfully,


Norman R. Sherbert

February 3, 1997

TO: Representative Herman Dillon
Representative Andrew Howell
Representative Eugene Shore

FROM: Norman R. Sherbert and John C. Peterson:
Representing The Polk Company

RE: Sub-Committee on HB 2010 Meeting on Thursday, January 29, 1997

This letter is written in response to questions that were asked during the above referenced sub-committee meeting. The three answers that are due to you are as follows:

1. Definition of Data Elements that The Polk Company receives from Kansas;
2. The cost of records purchased in bulk form, and the relation of Kansas charges to those of other states; and
3. When, how, and in what form are bulk records received by The Polk Company from Kansas?

With respect to No. 1 above, please find attached two pages entitled "Kansas Data Elements" which list all data we presently receive per our contract with the state. This data is used in a summary of the fields as follows:

- A. Vehicle Data
Body Style
Weight
Make
Model
Odometer Reading
Odometer Code

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Representative Herman Dillon
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Vehicle Type
VIN
Year Model

This information, along with owner name and address, is used for manufacturer recall and campaigns.

B. Name and Address Data

Owner Name (up to five names can be listed)
Owner Address
Mailing Address
Lien Holder Name (two lien holders can be listed)
Lien Holder Address

Name and address data cannot be used for direct marketing in Kansas. We are limited to uses like Market Areas reports. VIN traces, such as sales vs. registration traces, are not allowed other than for recall. We can use the name and address for recall. Lien holder name and address is limited to enhancing our motor vehicle statistics. We do not use the lien holder name and address for any other purpose.

C. Title and Registration Data

Application Date
Date Vehicle Entered the State
Expiration Date
License Number
Previous Plate Number
Purchase Date
Registration Type
Title Issue Date
Title Number
Title Type
Transaction Date

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We use several of these fields (along with vehicle data) to create a history data base for the vehicle. It is used to track odometer and branding information. It is also useful to track vehicles that move in and out of the state. The name is not used for this purpose and the only geography used is the zip code.

As testified during the subject sub-committee meeting, name and address are the only personal information we receive in the purchase of bulk data. And, since we do not purchase individual records, we do not receive nor do we want or need any other personal information.

With respect to No. 2. above, we have attached a sheet to this response entitled RECORD COST RANKED BY PRICE. This sheet was compiled by Polk to show that indeed Kansas ranks near the top (tied for third) in the cost to purchase motor vehicle registration and title data in bulk from all 50 states. Prior to the last increase in rate from Kansas, The Polk Company paid \$20.00 per thousand records, which was right around the median paid for all states. The rates reflected, in some cases, have been adjusted to show a cost per thousand, but in fact we may be charged a flat rate plus a rate per thousand. And, we do exchange services for release of the data in at least one state. Clearly though, the majority of states charge a dollar amount per thousand and Kansas is presently one of those highest cost states. In addition, as we stated, our rate of return on investment in Kansas is one of the lowest because of our limited use of the data.

With respect to No. 3. above, we have attached to this response a copy of our AGREEMENT with Kansas, i.e. to purchase records in bulk. You will note that the Agreement specifies, in part, what we receive (title and registration records only), the cost (\$50.00 per thousand), when provided (weekly), how we can and cannot use the data (several sections within the Agreement), and how we shall receive the data (by direct telecommunication lines or via magnetic tapes). To clarify testimony during the sub-committee meeting, Polk is prepared to receive direct electronic transmittal of data in bulk when Kansas is equipped to transmit the information by telecommunication lines. That ability by the state will, in fact, reduce the overhead cost of transmittal and reflect an additional financial benefit to Kansas. It should also be noted that Polk, in addition to the

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charge per thousand rate, pays the direct cost of magnetic tapes, and the handling and mailing of those tapes.

There was also some discussion on the amount of data Polk receives on a weekly basis. We do maintain the complete data base of Kansas for motor vehicle registration and title records. We therefore do not receive a "complete" data base dump, but rather just the information that has been changed over the last previous week. By use of an already existing Kansas program, the state sends only the delta, or difference in data from one week to the next. In fact, the amount of data that is received weekly may have been perceived to be quite more extensive than what is actually being sent.

You will also note in the Agreement that Polk agrees to protect (the) records and thereby assumes some liability in that regard. Also, the Department of Revenue has the right to audit our records on how the records are used in regard to provisions of the Kansas statutes. In that light, you can see that some of the concerns that have been raised during the debate on HB 2010 can certainly be addressed in the official agreement between the parties, in addition to clarifying the intent, as necessary, within the statutes as you see fit.

We believe this letter and the respective attachments should answer the questions from the sub-committee meeting. In addition, we would like to reiterate that while the answers to these questions are important, the main question that remains is if you feel that marketing and survey should be allowed with the data received by Polk, and the like, as is now allowed in 36 other states and is being reviewed in the remaining 14 states in direct relationship with implementing the Federal Driver's Privacy Protection Act. We continue to believe, as Ms. Betty McBride stated in her testimony, that this is a decision that needs to be made by the Legislature. In contradictions to some of the testimony that has been made (and we quicken to add--by some who do not know the purpose and result of direct targeted mail) we, in fact, believe a service that is needed by some segment of the Kansas society as they make important buying decisions is presently being denied. And, in fact, that there should be a reduction in unwanted mail in Kansas in favor of mail that is directed to persons who shop for certain kinds of products. Again, by allowing the language to stand, which provides for some marketing and survey, and by giving the individual the right to choose not to receive information for marketing and survey (i.e. opt-out), the

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decision on how their motor vehicle information can be used is up to the individual person.

We again would like to thank you for your consideration and deliberation on this matter. We will be drafting some language, at least in concept, to answer some of the questions presented during debate on HB 2010, and will have that available for the next sub-committee meeting. Specifically, we must make sure that it is quite clear that we are not trying to, nor do we intend to, compete with the state for the sales of records. Also, we feel it is necessary to more clearly define how we propose to use the data, and what specifically should be denied in the use of that information and those records.

Respectfully,

John C. Peterson

Norman R. Sherbert

STATE OF KANSAS



DIVISION OF THE BUDGET

Room 152-E
State Capitol Building
Topeka, Kansas 66612-1504
(913) 296-2436
FAX (913) 296-0231

Bill Graves
Governor

Gloria M. Timmer
Director

January 23, 1997

The Honorable Gary Hayzlett, Chairperson
House Committee on Transportation
Statehouse, Room 115-S
Topeka, Kansas 66612

Dear Representative Hayzlett:

SUBJECT: Fiscal Note for HB 2010 by Special Committee on Transportation

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2010 is respectfully submitted to your committee.

HB 2010 would apply provisions of the Open Records Act to all records of the Division of Vehicles of the Department of Revenue, subject to provisions of the bill that also allow businesses authorized use of these records in bulk distribution for surveys or marketing. Provisions of the bill allow individuals an opportunity to prohibit disclosure of personal information and require the Division of Vehicles to implement methods and procedures to honor individual requests for privacy. "Personal information" is defined in the bill. In some instances, disclosure of personal information cannot be prohibited. These instances are specified in the bill and include uses by government agencies, such as courts or law enforcement agencies.

The Department of Revenue reports that its Division of Vehicles has already initiated measures to implement procedures for offering persons an "opt-out" on personal information. The agency reports that the fiscal impact of implementing these procedures will be minimal and can be funded with existing resources.

As a point of information, the Department of Revenue notes that receipts collected from the sale of Division of Vehicles open records amounted to approximately \$3.0 million in FY 1996. Of that total, \$1.6 million went to the Vehicle Operating Fund of the Department of Revenue and \$1.4

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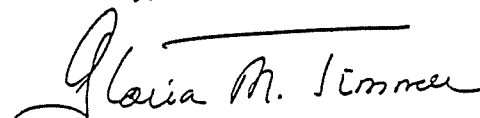
The Honorable Gary Hayzlett, Chairperson

January 23, 1997

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million to the Kansas Highway Patrol Training Center Fund. More than \$2.6 million of the total \$3.0 million in revenue was generated from the sale of records through the Information Network of Kansas (INK). There is potential for a significant impact to INK, depending on how the network fares in competition with other vendors who may be able to charge less than INK is currently charging for records in offering them to smaller volume requesters.

Sincerely,



Gloria M. Timmer
Director of the Budget

cc: Lynn Robinson, Revenue



March 18, 1997

Chairman Vidricksen, and members of the Senate Transportation and Tourism Committee:

The balance between an individual's right to privacy, and the public's right to know is, in many instances, a delicate one. This year's legislature has a chance to strike that balance in House Bill 2010.

But to strike that delicate balance, the bill **MUST** include a provision to allow the media its rightful access to certain types of information.

The bill before you already acknowledges numerous exceptions to the law which limits access to records held by the Division of Motor Vehicles. The exceptions have been included for good reason. There are valid instances when the public good simply outweighs the individual's right to privacy.

I submit there is another equally valid exception. That is the right of members of the media to access motor vehicle records. We do not ask for such access without good reason, nor do we take our responsibilities with that information lightly.

Examples abound where media access to driving and motor vehicle records has proven to be crucial to public safety issues. I will cite just one tragic instance: Two years ago a Murray State University bus was transporting cheerleaders to a post-season tournament game for the Kentucky school's men's basketball team. The bus was involved in an accident, one cheerleader was killed and others were seriously hurt. Authorities determined excessive speed was a contributing factor in the accident. Only later did members of the media find that the driver had numerous speeding violations on his record.

In this example, media scrutiny came too late. But, at least the opportunity for scrutiny was there. I urge you to include the amendments proposed by the Kansas Press Association, to allow the media to continue as keepers of the public trust.

Ben R. Bauman

News Director, WIBW AM-FM/Kansas Information Network
Past President, Associated Press Broadcasters, Kansas Member, Attorney General's Committee
on Brighter Sunshine

SENATE TRANSPORTATION & TOURISM
3/18/97
ATTACHMENT 3



Kansas Association of Broadcasters

1916 SW Sieben Ct, Topeka KS 66611-1656
(913) 235-1307 FAX (913) 233-3052
E-mail kab@ink.org

Testimony before the Senate Transportation and Tourism Committee

March 18, 1997

by Harriet Lange, President/Executive Director

Kansas Association of Broadcasters

RE: HB 2010

Thank you Mr. Chairman and Members of the Committee. I am Harriet Lange, president and executive director of the Kansas Association of Broadcasters (KAB).

The KAB serves a membership of radio and television stations in Kansas. We appreciate the opportunity to appear before you today on HB 2010.

We support the provisions in HB 2010. In our opinion, motor vehicle records should remain open, not only to those organizations and individuals currently in the bill, but also to representatives of media and those who disseminate information to the public. Others have cited specific examples of the public interest being served through the media's dissemination of information contained in motor vehicle records.

We urge your favorable consideration of the amendment offered by the Kansas Press Association - to open records related to the operation of a motor vehicle, public safety or driver safety, to media outlets or other organizations who disseminate information to the public.

Thank you for your consideration.

SENATE TRANSPORTATION & TOURISM
3/18/97
ATTACHMENT 4

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MANHATTAN, KANSAS 66505-0787
P.O. BOX 787
OSAGE AT NORTH FIFTH STREET
TELEPHONE (913) 776-2200
FAX (913) 776-8807 EXT 227

March 18, 1997

To: Sen. Ben Vidricksen, chairman, and Members, Senate Transportation Committee:

I asked to visit with you this morning for two purposes. The first is to endorse passage of HB 2010. This bill is constructive in that it codifies the general principle of public access to records that has been a staple of a well-informed Kansas citizenry.

The second is to urge your favorable consideration of amendments offered by the Kansas Press Association that would strengthen HB 2010 by making it more assertive and more functional with specific respect to the issue of reporting on matters of public safety.

This amendment stipulates that access to such records shall be made available, in addition to other organizations already delineated, to persons working in the general field of public communication media.

I address this issue with full respect for the legitimate public interest in the maintenance of privacy. I do not believe the Legislature ought to proceed in ignorance of this concern. Journalists, like lawmakers and like all citizens, value their privacy. However, legitimate concerns for privacy always have co-existed, and can continue to co-exist, with legitimate concerns for maintaining productive access to records. It is at the heart of the 1st Amendment that we do not lightly shut off information that enables us to deal with social problems. Let us keep in mind the curative power of sunshine.

Public safety relates to the physical safety of drivers, passengers, pedestrians and property — of all who use the state's roadways. In this context, it is worth noting that access to such records has been a significant tool for many groups — including not only the press but also Mothers Against Drunk Driving — in the fight for public safety. Beyond that, while privacy is a sensitive and important matter, operation of a motor vehicle is a privilege extended by the state; it is not a right. As such, records pertaining to that operation ought properly to be considered in a different category from ordinary privacy protection.

Happily, a prudent refinement of the proposed law governing access — as suggested by the KPA — can achieve the proper balance between these concerns.

The amendment proposed by the KPA allow members of the media to examine a range of issues related to matters of public safety. As one example, were this bill in place — and were regulations pertaining to cost interpreted by the responsible state agency in a more reasonable man-

AFFILIATED WITH: DAILY NEWSPAPERS SPEARFISH, LEAD AND DEADWOOD
WINFIELD, KANSAS, COURIER HASTINGS, NEBRASKA, TRIBUNE SHERIDAN, WYO
RADIO STATIONS KFYO, KZII, LUBBOCK, TEXAS KMAN, KMKF,

SENATE TRANSPORTATION & TOURISM
3/18/97
ATTACHMENT 5

5-1

JR

er — my newspaper would request records that would enable us to examine the safety records of licensed drivers in Riley County. On a daily basis, I publish information that causes me to view such questions as central to the interests of public safety. Those questions, the answers to all of which would be unknowable to me absent passage of HB 2010 as amended, include:

1. How many persons in Riley County are licensed to drive despite multiple convictions for offenses related to the unsafe operation of their vehicles? 2. How many of these drivers were convicted for offenses related to alcohol? 3. How many were convicted for offenses related to the use of other drugs? 4. How many licensed drivers who share our roads have demonstrated an ongoing disregard for laws designed to reduce the natural driving hazard...laws pertaining to egregious violations of speed, right-of-way, or reckless or careless driving? 5. What is the relationship of youth — or age — to driver safety, and does that relationship raise questions regarding state law in the general area of licensing?

The question may naturally arise whether the state has authority, under the federal law, to make such an exception. In response to that concern, I would cite subparagraph 14 of the section of the federal law pertaining to permissible uses, which authorizes the state to make exceptions to the federal ban “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.”

Passage of this law without the amendment offered by KPA would hamper our ability to address these legitimate safety issues; failure to pass the law in any form risks the undesirable consequence of sealing all of those issues from public scrutiny.

I hope you share my view that the public scrutiny function is one of the most important functions of the press in Kansas, or elsewhere for that matter. By way of illustration, let me cite a few instances where the performance of such a function has clearly impacted on matters of public safety.

A recent series of articles published in the Minneapolis Star-Tribune explored the topic of licensed commercial airline pilots who had driving records that included convictions for offenses related to alcohol abuse. This series of articles identified 41 licensed commercial pilots whose own driving licenses had been pulled due to alcohol-related offenses. It caused the Federal Aviation Agency to re-do its licensing regulations with an eye toward the removal from airplane cockpits of numerous pilots who constituted a potential threat to their passengers.

Also in Minneapolis, TV station WCCO used access to these types of records to expose the danger of the practice of issuing automobiles that had been totalled in other states “clean titles” in Minnesota, allowing some unscrupulous salespeople to then resell those same autos to unsuspecting new owners.

Similarly, the St. Paul Pioneer Press, accessing driving records which the Legislature of that state saw fit for purposes of public safety to maintain in a free and open manner, exposed a problem among the drivers of school buses.

In Murphysboro, Tenn., The Murphysboro American utilized access to such records to establish that a candidate for mayor did not meet the residency requirements pertinent to the office.

Through use of driving records, reporters working cooperatively in Minnesota and Tennessee were recently able to locate and identify a deadbeat dad who owed \$97,000 in back child support to his ex-wife; she was dying of cancer. Family service workers had been unable, or unwilling, to trace this dad.

We should and do expect the airlines, the school districts, and the various other public and

private agencies who deal in transportation — to cite just one area — to have the public's best interests at heart. In the great majority of instances, those public and private agencies can and do fulfill that role appropriately.

Notwithstanding that, the examples I have cited illustrate the wisdom of allowing the press to function as it is designed to function — in a watchdog capacity that mirrors in a private fashion the functions the Legislature quite legitimately insists that the Bureau of Post Audit exercise for the state itself.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Felber", with a long horizontal flourish extending to the right.

Bill Felber
Executive Editor

Wichita **Business Journal**

March 18, 1997

To: Members of the Senate Transportation Committee

I come before you today not only as president of the Kansas Chapter of the Society of Professional Journalists and the state's Project Sunshine chair, but as a working journalist and lifelong resident of this state. My purpose is simple: to urge passage of House Bill 2010 with the amendments offered by the Kansas Press Association.

When Congress passed the Driver Privacy Protection Act of 1994, it did so in a well-intentioned but misguided response to a horrendous crime. By closing all driver's license information other than information on vehicular accidents, driving violations and a driver's status, federal lawmakers hoped to protect license-holders from members who might use those records to do them harm.

Unfortunately, Congress also shut the door on the press and its ability to use an often-relied upon tool to investigate and report on matters of public safety and concern. Yes, Mary Smith's multiple drunk driving convictions still would be obtainable — but would that be the same Mary Smith employed as a school bus driver? Who could verify that one way or another without access to such information as Mary Smith's address, birth date or Social Security number? Frankly, that is more frightening to me than the idea that someone might be able to look up my address — presently contained in hundreds of other data bases — or see what I listed as my weight when I applied for my driver's license.

In my view, federal lawmakers have exposed the public to an even greater danger: being left in the dark without even the possibility of the press using that information to keep

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citizens informed about issues of public concern. But it doesn't have to be that way. Kansas can and should do as other states have done and pass opt-out legislation, which keeps the driver's license records open except in those cases where the license-holder has requested that his or hers be closed.

HB 2010 in its unamended form, however, still has a missing component. You see, Congress passed its so-called anti-stalking measure with a host of exemptions, including ones for private detectives and telemarketers. However, the working press was not one of them — not because Congress didn't want the press to have such access but because national media organizations opposed the act on constitutional grounds and thus did not lobby for such an exemption.

On a state level, news organizations have had to be more pragmatic. It could be years before lawsuits questioning the federal act's constitutionality are heard. In the meantime, the interests of the public are best served if the press, acting as the public watchdog, has access to the information it needs to keep the state's residents informed.

Let me conclude by saying that while HB 2010 as amended by KPA doesn't make the records as accessible as some of us would like, nor as inaccessible as others would like, it does represent a compromise — one that offers far better protection to the state's residents than that which would go into effect this September if you fail to act.

Respectfully,

A handwritten signature in black ink, appearing to read "Roz Hutchinson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Roz Hutchinson

Kansas Pro Chapter of the Society for Professional Journalists



Kansas Press Association, Inc.

5423 SW 7th St., Topeka, KS 66606 • (913)271-5304 • Fax (913)271-7341
<http://www.kspress.com>

TO: Senate Transportation And Tourism Committee
FROM: Kansas Press Association
RE: Amendments to H.B. 2010
DATE: March 17, 1997

The Kansas Press Association respectfully submits the following amendments to H.B. 2010 for your consideration.

Thank you.

John Reinhart
Director of Government Relations

SENATE TRANSPORTATION & TOURISM
3/18/97
ATTACHMENT 7

7-1

HOUSE BILL No. 2010

By Special Committee on Transportation

12-17

9 AN ACT relating to the records of the division of vehicles; amending
10 K.S.A. 1996 Supp. 74-2012 and repealing the existing section.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. K.S.A. 1996 Supp. 74-2012 is hereby amended to read as
14 follows: 74-2012. (a) *All records of the division of vehicles shall be subject*
15 *to the provisions of the open records act except as otherwise provided*
16 *under the provisions of this section and by K.S.A. 1996 Supp. 74-2022,*
17 *and amendments thereto.*

18 (a) (b) All records of the division of vehicles relating to the physical
19 or mental condition of any person, to expungement or except as provided
20 further, any photographs maintained by the division of vehicles in con-
21 nection with the issuance of drivers' licenses shall be confidential. Pho-
22 tographs or digital images maintained by the division of vehicles in con-
23 nection with the issuance of drivers' licenses shall be available to law
24 enforcement agencies for use in criminal investigations. Records of the
25 division relating to diversion agreements for the purposes of K.S.A. 8-
26 1567, 12-4415 and 22-2908, and amendments thereto, shall be confiden-
27 tial and shall be disclosed by direct computer access only to:

28 (1) A city, county or district attorney, for the purpose of determining
29 a person's eligibility for diversion;

30 (2) a municipal or district court, for the purpose of using the record
31 in connection with any matter before the court;

32 (3) a law enforcement agency, for the purpose of supplying the record
33 to a person authorized to obtain it under paragraph (1) or (2) of this
34 subsection; or

35 (4) an employer when a person is required to retain a commercial
36 driver's license due to the nature of such person's employment.

37 All other records of the division of vehicles shall be subject to the
38 provisions of the open records act except as otherwise provided by K.S.A.
39 1996 Supp. 74-2022 and amendments thereto or this section.

40 (b) (c) ~~Lists of persons' names and addresses~~ *Personal information*
41 *contained in or derived from records of the division of vehicles shall not*
42 *be sold, given or received for the purposes prohibited by K.S.A. 21-3914,*
43 *and amendments thereto, except that:*

1 (1) The director of vehicles may provide to a requesting party, and a
2 requesting party may receive, such a list and accompanying personal in-
3 formation from public records of the division upon written certification
4 that the requesting party shall use the list personal information solely for
5 the purpose of: (A) Assisting manufacturers of motor vehicles in compil-
6 ing statistical reports or in notifying owners of vehicles believed to: (i)
7 Have safety-related defects, (ii) fail to comply with emission standards or
8 (iii) have any defect to be remedied at the expense of the manufacturer;
9 (B) assisting an insurer authorized to do business in this state, or the
10 insurer's authorized agent, in processing an application for, or renewal or
11 cancellation of, a motor vehicle liability insurance policy; ~~or~~ (C) assisting
12 the selective service system in the maintenance of a list of persons 18 to
13 26 years of age in this state as required under the provisions of section 3
14 of the federal military selective service act; or (D) assisting businesses
15 authorized to receive records under subparagraphs (A) or (B) of this par-
16 agraph in bulk distribution for surveys or marketing, if: (i) Individuals
17 are provided an opportunity to prohibit the disclosure of personal infor-
18 mation under subsection (g); and (ii) the information will be used, rented
19 or sold solely for bulk distribution for surveys or marketing and that such
20 surveys and marketing will not be directed at those individuals who have
21 requested under subsection (g) not be directed at them.

22 (2) Any law enforcement agency of this state which has access to
23 public records of the division may furnish to a requesting party, and a
24 requesting party may receive, such a list and accompanying information
25 from such records upon written certification that the requesting party
26 shall use the list solely for the purpose of assisting an insurer authorized
27 to do business in this state, or the insurer's authorized agent, in processing
28 an application for, or renewal or cancellation of, a motor vehicle liability
29 insurance policy.

30 ~~(e)~~ (d) . If a law enforcement agency of this state furnishes information
31 to a requesting party pursuant to paragraph (2) of subsection ~~(b)(2)~~ (c),
32 the law enforcement agency shall charge the fee prescribed by the sec-
33 retary of revenue pursuant to K.S.A. 1996 Supp. 74-2022, and amend-
34 ments thereto, for any copies furnished and may charge an additional fee
35 to be retained by the law enforcement agency to cover its cost of providing
36 such copies. The fee prescribed pursuant to K.S.A. 1996 Supp. 74-2022,
37 and amendments thereto, shall be paid monthly to the secretary of rev-
38 enue and upon receipt thereof shall be deposited in the state treasury to
39 the credit of the electronic databases fee fund, except for the \$1 of the
40 fee for each record required to be credited to the highway patrol training
41 center fund under subsection ~~(e)~~ (f).

42 ~~(d)~~ (e) . The secretary of revenue, the secretary's agents or employees,
43 the director of vehicles or the director's agents or employees shall not be

1 liable for damages caused by any negligent or wrongful act or omission
2 of a law enforcement agency in furnishing any information obtained from
3 records of the division of vehicles.

4 ~~(e)~~ (f) A fee in an amount fixed by the secretary of revenue pursuant
5 to K.S.A. 1996 Supp. 74-2022, and amendments thereto, of not less than
6 \$2 for each request for information in the public records of the division
7 concerning any vehicle or licensed driver shall be charged by the division,
8 except that the director may charge a lesser fee pursuant to a contract
9 between the secretary of revenue and any person to whom the director
10 is authorized to furnish information under *paragraph (1) of subsection*
11 ~~(b)~~ (c), and such fee shall not be less than the cost of production or
12 reproduction of any information requested. Except for the fees charged
13 pursuant to a contract for title and registration records on vehicles au-
14 thorized by this subsection, \$1 shall be credited to the highway patrol
15 training center fund for each record.

16 (g) *The division of vehicles shall implement methods and procedures*
17 *to ensure that individuals are provided an opportunity, in a clear and*
18 *conspicuous manner, to prohibit the disclosure of personal information*
19 *collected by the division of vehicles, except under the following situations:*

20 (1) *For use by any government agency, including any court or law*
21 *enforcement agency, in carrying out its functions, or any private person*
22 *or entity acting on behalf of a federal, state or local agency in carrying*
23 *out its functions;*

public

24 (2) *for use in connection with matters of motor vehicle or driver safety*
25 *and theft; motor vehicle emissions; motor vehicle product alterations; re-*
26 *calls, or advisories; performance monitoring of motor vehicles, motor ve-*
27 *hicle parts and dealers; motor vehicle market research activities, including*
28 *survey research; and removal of nonowner records from the original*
29 *owner records of motor vehicle manufacturers;*

30 (3) *for use in the normal course of business by a legitimate business*
31 *or its agents, employees or contractors, but only:*

32 (A) *To verify the accuracy of personal information submitted by the*
33 *individual to the business or its agents, employees or contractors; and*

34 (B) *if such information as so submitted is not correct or is no longer*
35 *correct, to obtain the correct information, but only for the purposes of*
36 *preventing fraud by, pursuing legal remedies against, or recovering on a*
37 *debt or security interest against, the individual;*

38 (4) *for use in connection with any civil, criminal, administrative or*
39 *arbitral proceeding in any federal, state or local court or agency or before*
40 *any self-regulatory body, including the service of process, investigation in*
41 *anticipation of litigation, and the execution or enforcement of judgments*
42 *and orders, or pursuant to an order of a federal, state or local court;*

43 (5) *for use in research activities, and for use in producing statistical*

- 1 reports, so long as the personal information is not published, redisclosed
- 2 or used to contact individuals;
- 3 (6) for use by any insurer or insurance support organization, or by a
- 4 self-insured entity, or its agents, employees or contractors, in connection
- 5 with claims investigation activities, antifraud activities, rating or under-
- 6 writing;
- 7 (7) for use in providing notice to the owners of towed or impounded
- 8 vehicles;
- 9 (8) for use by any licensed private investigative agency or licensed
- 10 security service for any purpose permitted under this subsection;
- 11 (9) for use by any employer or its agent or insurer to obtain or verify
- 12 information relating to a holder of a commercial driver's license that is
- 13 required under the Commercial Motor Vehicle Safety Act of 1986 (49
- 14 U.S.C. App. 2710 et seq.);
- 15 (10) for use by any requester, if the requester demonstrates it has
- 16 obtained the written consent of the individual to whom the information
- 17 pertains.

The Division shall not be considered to have disclosed or otherwise made available personal information when it verifies the accuracy of personal information already in the possession of individuals who are not officers, employees or contractors of the Division, provided that such verification shall be limited to informing such individuals whether the personal information in their possession is correct, and shall not include the provision of corrective information.

- 18 (h) As used in this section "personal information" means information
- 19 that identifies a person, driver identification number, name, address, in-
- 20 cluding information on vehicular accidents, driving or equipment-related
- 21 violations, but shall not include such information considered confidential
- 22 under subsection (b).
- 23 (i) The secretary of revenue may adopt such rules and regulations
- 24 as are necessary to implement the provisions of this section.

Pursuant to section 2721(b)(14) of Title 18 of the United States Code, any person who has a purpose to disseminate to the public a newspaper, book, magazine, broadcast or other similar form of public communication, including dissemination by computer or other electronic means, may request the division to provide individual or bulk motor vehicle records, such dissemination being related to the operation of a motor vehicle, public or driver safety. Upon receipt of such request, the division shall release the requested motor vehicle records. It is the public policy of this state that records be open to the public unless otherwise provided by law. The disclosure provisions of this section shall be liberally construed and the exemptions strictly construed to promote this public policy.

- 25 Sec. 2. K.S.A. 1996 Supp. 74-2012 is hereby repealed.
- 26 Sec. 3. This act shall take effect and be in force from and after its
- 27 publication in the statute book.