

Model Act to Prohibit the Capture and
Storage of Personal Information Obtained
from a Driver's License or ID Card

Section 1. Definitions.¹ As used in this act the following words and phrases shall have the following meanings:

(a) "Card holder" means a person who holds a driver's license, or a non-driver identification card issued by the [name of state or provincial MVA], and who presents such document as proof of identification or age, or both, in the course of any commercial transaction;

(b) "Clear and conspicuous disclosure" means required disclosures shall be of such size or color contrast and so placed as to be readily noticeable to an individual who is required or requested to provide his or her driver's license or non-driver identification card by a commercial user in a commercial transaction. A required disclosure is conspicuous when it is so written or displayed that a person against whom it is to operate ought to have noticed it. Language in the body of a form is "conspicuous" if it is in larger or contrasting type or color. The following disclosure shall be made whenever a commercial user requests or requires an individual to provide his or her driver's license or non-driver identification card in a commercial transaction:

The personal identification information contained on your driver's license or non-driver identification card is being electronically scanned as a part of this transaction and may be recorded and retained by this establishment."

Disclosure of the required information may be made either by a posted sign or by providing a handbill to each person who is asked to provide a license or card from which personal information will or may be electronically captured and stored. The information must be printed and disclosed in the English language in block type of black print on a white background. If on a handbill, the print size shall be not less than 10-point type. If by posted sign, the print shall be sufficient in size for a person with 20/20 vision, either corrected or uncorrected, to be able to read the information disclosed from a distance of five (5) feet. If the license or card is required to be provided to gain access to the business and personal information encoded on the license or card will be electronically captured and stored through the use of a transaction scan device, signs containing the required disclosure shall be posted within five (5) feet of the entry point. Such signs shall also be posted at each point of sale if the personal information encoded on the license or card will be electronically captured and stored at the point of sale. All signs shall be clearly visible to the license or card holder for whose benefit the signs are required to be posted. If the area in which the license or card is required or requested to be provided is

¹ These definitions are adopted, with changes and additions, from sections 30-86 and 53-344 of the Connecticut General Statutes. This recent law enables merchants which sell liquor and/or tobacco to use transaction scan devices to verify the age of purchasers. The merchants are allowed to retain the information for limited purposes, including proof that they have verified legal age requirements. New York and Ohio have enacted similar legislation.

not sufficiently lighted by natural or artificial light for the information on the sign to be clearly visible from five (5) feet, the sign shall be further illuminated so that it is visible from such distance;

(c) “Commercial transaction” means the purchase, lease or exchange of goods, food, drink or services, including transportation services, or a financial transaction, including but not limited to, access to a bank account or check-cashing services, and access to any place of public accommodation, in the course of which a driver’s license or non-driver identification card is presented to verify identity, age or both;

(d) “Commercial user” means a person, or business organization, or any agent, employee or other person acting on behalf of such person or business organization that uses a transaction scan device to obtain personal information from a driver’s license or non-drivers identification card presented in the course of a commercial transaction;

(e) “Personal information” means all personally-identifying information, including but not limited to, name, address, date-of-birth, social security number, driver license or non-driver identification card number, photograph or digital image, signature or digitized signature, and medical or disability information that is contained and stored in a magnetic strip or bar code or appears elsewhere on or in a driver’s license or non-driver identification card; and

(f) “Transaction scan device”² means any device or combination of devices that is capable of deciphering, in an electronically readable format, the information electronically encoded in a magnetic strip or bar code or elsewhere on or in a driver’s license or non-driver identification card and any other device, including but not limited to, photocopiers, and video or still cameras that can scan or record the information printed on the driver license or non-driver identification card, including the photograph or digital image of the person whose identification information is contained on the license or non-driver identification card.

Section 2: Prohibition on Capturing and Using Encoded Information, Printed Information or an Individual’s Photograph or Digital Image.

(a) Except as provided in this Act, no commercial user who obtains access to an individual’s driver license or non-driver identification card in a commercial transaction shall use any transaction scan device to obtain personal information relating to the individual whose information is printed or encoded on or in such license or non-driver identification card.

(b) No commercial user shall buy, sell, or otherwise obtain and transfer or disclose to any third party or download, use or maintain any data or database knowing it to contain

² This definition expands on the usual meaning of “transaction scan device” to include all optical devices for recording visual, i.e. non-encrypted information, appearing on the documents.

personal information obtained from an individual's driver license or non-driver identification card in violation of this Act.

Section 3. Exceptions and Limitations on Use.

(a) If a commercial user is authorized or required by any provision of state law [may substitute reference to specific statutes] to verify the age of a person attempting to purchase an alcoholic beverage or liquor or tobacco products, such commercial user may use a transaction scan device as indicated herein and maintain a record of the name and date of birth of such card holder, [and of any other personal information that is authorized or required by state law to be kept in regard to such transactions] if the user has made the required clear and conspicuous disclosure of the practice of recording personal information from a driver's license or non-driver identification card. Except in connection with an official law enforcement investigation, or pursuant to any order of a state or federal administrative agency or a court, encoded information that is maintained shall not be sold, transferred or disclosed in any manner to any third party and such information shall be not be stored and retained for more than sixty days unless the commercial user has received a request, in writing, from a law enforcement agency to preserve the personal information concerning the specific individual and transaction for investigative purposes. When the sixty days has elapsed, or when the information is no longer required by law enforcement, whichever is later, the recorded information shall be rendered unusable, both visually and electronically, and destroyed.

(b) If a commercial user discovers that encoded information is substantially different from other personal information that appears on the face of a driver's license or non-driver identification card, or if the commercial user has a reasonable basis to believe that such document has been tampered with, or has been fraudulently issued or produced, such encoded information and digital image or photograph may be recorded and maintained, but only for purposes of:

(1) initiating or pursuing a complaint made to an official administrative or law enforcement agency, or

(2) pursuing any relief or remedy authorized by law against the card holder, or other person or persons responsible for the document's alteration, production or fraudulent use. If no complaint or report is made to such officials within ten business days of the capture of the information the recorded information shall be rendered unusable and destroyed.

(c) If a commercial user has obtained the express consent of the card holder, encoded information may be recorded and maintained, but only in the manner and to the extent that is specifically authorized by such card holder. As used in this subsection, "express

consent” means consent in writing, including consent conveyed electronically that bears an electronic signature as defined in Section 106(5) of Public Law 106-229.³

Section 4. Non-applicability to Government Uses.

The provisions of this Act do not apply to the use of a transaction scan device or the use or storage of encoded information by any federal, state or local government agency or any person or firm acting on behalf of such agency so long as such capture and storage is not in violation of any other law. This section shall not apply to authorized security personnel, in the performance of their duties, in controlling access to land or buildings owned or controlled by the government of United States, including facilities overseen by the United States Transportation Security Administration, or in controlling access to land or buildings owned or controlled by the [State of] or a municipality or other governmental unit therein.

Section 5. Penalties.

(a) A violation of any provision of this Act shall be a [insert appropriate criminal penalty under state law].

(b) Any person who claims to be aggrieved by a violation of any provision of this Act shall be entitled to bring a civil action, including an action for immediate relief by means of an injunction or other order of the court. The court may award punitive damages in any such action upon proof of willful or reckless disregard of the law, and may award reasonable attorney’s fees and costs in any such action, as the court determines to be appropriate.

(c) A violation of this section shall be deemed to be an unfair and deceptive trade practice, as defined in [insert appropriate state law, if applicable, otherwise delete] if the aggrieved party has complied with any applicable special filing or procedural requirements of that law.

³ This is the same definition contained in the federal Driver’s Privacy Protection Act (DPPA), at 18 USC §2725 (5).