

December 5, 2002

Al Richards, Manager
Donna Thornton, Manager
Home Depot
42 D'Amante Drive
Concord, NH 03301

RE: NH Driver Privacy Act, RSA 260:14

Dear Mr. Richards and Ms. Thornton:

It has come to the Department of Safety's attention, by way of complaint, that Home Depot has a return policy that includes the retaining and storing of customer personal information obtained from a New Hampshire driver's license for the purpose of tracking merchandise and preventing a customer from continuously getting store credits on the same merchandise. The Department of Safety received a complaint from a New Hampshire licensed driver who indicated that the person was refused a credit because s/he would not give the driver's license to the clerk.

Please be advised that the State of New Hampshire has one of the strictest driver privacy laws in the country. Pursuant to RSA 260:14, I(c) "personal information" means "...*information in motor vehicle records that identifies a person, including a person's photograph or computerized image, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information*". The law further provides that "[p]roper motor vehicle records shall be kept by the department at its office" and that motor vehicle records "...shall not be public records or open to inspection of any person," other than as proscribed in RSA 260:14.

Arguably, Home Depot's current practice violates the New Hampshire driver privacy law if such personal information is being required to be furnished by the person and without his or her express consent. The Department is of the position that Home Depot's request for the personal information of a New Hampshire licensed driver is not a recognized exception under RSA 260:14, III, IV or V and therefore this letter serves as notice to ***cease and desist*** your current practice. The Department is providing you with an opportunity to amend your practice prior to taking action it deems necessary to protect individual privacy rights. The New Hampshire Legislature has made it clear that a driver's right to privacy is an important right that should be protected under clear and well defined guidelines.

Additionally and to that end, this past session the New Hampshire Legislature has enacted Chapter 242, Laws of 2002 which takes effect January 1, 2003. This law makes it a misdemeanor for anyone to knowingly scan, record, retain or store in any electronic form or format, personal information obtained from any New Hampshire license, unless authorized by the Department of Safety. See Chapter 242, Laws of 2002. However, as stated in the law, "[n]othing prohibits a person from transferring, in non-electronic form or format, personal information contained on the face of a license to another person, provided that the consent of the license holder is obtained...".

At this time, the Department has not authorized any scanning, recording, retaining or storing in any electronic form or format, the personal information obtained from any license. It is the Department's

Al Richards, Manager
Donna Thornton, Manager
November 18, 2002
Page 2 of 2

position that the law does not prohibit the photocopy of the front of a driver's license, so long as the photocopy is not scanned into an electronic form or format, and the consent of the license holder is obtained. However, the personal information contained in the photocopy of the driver's license may not be used for creating, retaining, or compiling an electronic database or file. I would appreciate it if Home Depot would review its return policy in light of the fact that the Department of Safety considers the practice of recording and retaining personal information from a driver license, into a database as being contrary to the letter and intent of the driver privacy law.

The law and regulations (Saf-C 5600, Confidentiality of Motor Vehicle Records) may be found at www.state.nh.us/dmv/privacy.html. I thank you for your anticipated cooperation. If you have any additional questions or concerns, please do not hesitate to contact Marta Modigliani, Esq. I am

Very truly yours,

Richard M. Flynn, Commissioner
Department of Safety

Cc: John A. Stephen, Assistant Commissioner
Virginia C. Beecher, Director, Division of Motor Vehicles
Marta Modigliani, Esq.