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**Technical Advisory**

**TA 226**

**Date: July 2, 2003**

**SUBJECT: Furnishing MVRs - It's Legal, But Not Permitted**

**BACKGROUND:** Commercial insureds in the process of hiring employees who will be driving company vehicles routinely contact their insurance agent to have the drivers added to the Business Auto Policy.

Typically, the commercial insured will provide the agency with the new employee's driver's license number, so that the agency can run an MVR. Some agencies have the practice of faxing the employer a copy of the MVR, especially in situations where the employee's driving record does not meet the underwriting guidelines of the Business Auto Policy. In other instances, the agency might call the employer to discuss problems with the MVR.

**MAIN POINTS:** *It's legal.* The federal Fair Credit Reporting Act (FCRA), which applies to all "consumer reports," including MVRs, CLUE reports, credit scores, and many other types of information on individuals, has very strict guidelines on what is "legal" regarding the use of such reports.

Under the FCRA, an employer is well within their rights to require that a current or prospective employee provide or make available a wide variety of personal information such as an MVR, credit report, criminal background report, etc. At the same time, the employee is granted significant safeguards regarding the access and use of such information for employment.

When any consumer report will be used for employment, the employee or prospective employee must first give written permission for such information to be obtained by the employer. When the employer requests this information from a "consumer reporting agency" (CRA) such as Equifax, Experian, TransUnion, ChoicePoint, etc., there are certain federally-mandated documents and procedures which must accompany the transaction between the CRA and the employer. For a detailed report on this, see the Federal Trade Commission (FTC) report, "Using Consumer Reports: What Employers Need To Know," available on the FTC website - [www.ftc.gov](http://www.ftc.gov).

An insurance agency that pulls an MVR in conjunction with "the underwriting of insurance," as prescribed in the FCRA, Section 604, does not need written permission. Therefore, when the commercial insured/employer sends a request to the agency to pull the MVR on a new employee in conjunction with adding the employee as a driver under the Business Auto Policy, the agency can do so without the written permission of the new employee.

In addition, to inform a commercial insured that a new driver *does or does not qualify as a driver* for underwriting purposes seems to be a part of "the underwriting of insurance."

However, most experts believe that if the agency shares the specific contents of an MVR with the employer, via fax or phone, the agency is no longer "underwriting insurance," but is now acting as a "consumer reporting agency," and must follow all the steps and procedures required under the FCRA.

Therefore, if the agency chooses to furnish MVRs to commercial insureds on their current or prospective employees, they may legally do so, if they follow all the requirements of a "consumer reporting agency" under the FCRA. Thus, the procedure can be "legal."

**But it's not permitted.** While the practice of an insurance agency furnishing MVRs to commercial insureds on their current or new employees can be "legal" under the FCRA, virtually all sources from whom the agency obtains the MVRs expressly prohibit the practice. Following are excerpts from the contracts of two MVR providers that many insurance agencies use.

MVR Company A: *"The Consumer Reports provided by Company A are for the sole and internal use of the Insurance Agency, and may not be resold, sub-licensed, delivered or displayed in any way or used by any third party. Insurance Agency certifies that it shall order, receive, disseminate and otherwise use the Consumer Reports in compliance with all applicable federal, state and local statutes, rules, codes and regulations. Insurance Agency agrees to indemnify and hold harmless Company A from any and all damages, costs, judgments and expenses."*

MVR Company B: *"All reports, whether oral or written, will be kept strictly confidential; except as provided by law, no information from reports will be revealed to any person except the subject of the report. No information will be requested for the use of any other person, agency or organization except with the written permission of Company B. Reports may not be resold or transferred to any other person. The unlawful ordering or use of consumer reports can subject you to criminal and civil penalties in accordance with both federal and state laws."*

Recently, one of the largest MVR Companies in the nation sent this memo to all insurance agency customers:

*"It has recently come to our attention that some insurance agencies may be furnishing MVRS obtained for commercial underwriting purposes to the commercial insurance buying customer."*

*"Please be aware that the consumer reports you obtain from us may not be used beyond the purpose for which they were ordered and cannot be sold or given to parties outside the ordering insurance company or insurance agency."*

*"Allowing an employer to receive an MVR that was provided to you for commercial underwriting purposes would be a violation of law as well as a violation of your agreement with us."*

Thus, the practice of an insurance agency furnishing MVRs to commercial insureds on their current or prospective employees is not permitted by most MVR providers, although the practice can be "legal" under the FCRA.

**NECESSARY ACTION:** Legal experts caution insurance agencies about getting involved in employee screening on behalf of their commercial insureds. As employers, commercial insureds not only have a right to conduct background checks on employees; in today's legal climate, they almost certainly also have a duty to do so.

However, there are countless employee screening services that can conduct proper, legal and permissible background checks on employees. Agencies should refer their commercial insureds to these screening services.

It is imperative that agencies distinguish between "insurance underwriting" functions and those which cross the line into "employee screening" activities. While agencies obtain MVRs and other consumer reports as a part of underwriting, there must be clear guidelines limiting their disclosure for any other purpose.

Legal experts recommend that agencies include such a privacy guideline in their employee handbook, or agency operations manual.