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Opinion No. 11-80

Senior Drivers

QUESTIONS

1. Can Tennessee mandate that drivers who reach a certain age periodically retake the Tennessee driver's license examination?

2. Can Tennessee modify driver's examinations for senior drivers to address concerns that aging drivers may experience as they continue to drive, such as reduced depth and distance perception?

3. Can Tennessee require that a senior driver be retested if the driver has experienced one or more accidents, or if a family member requests retesting due to a concern that the senior's driving skills have deteriorated?

4. Can Tennessee enact legislation allowing physicians to relay medical information to the State if the physician is concerned that a senior's health condition could impair his or her driving? Would the reporting of such information violate the federal Health Insurance Portability and Accountability Act ("HIPAA")?

5. Would any of the aforementioned measures if enacted constitute unlawful discrimination?

OPINIONS

1. Yes. Tennessee can enact laws requiring seniors to submit to re-examination as a condition of receiving or renewing a driver's license. Nothing in federal or Tennessee law prohibits the exercise of this general police power.

2. Yes, so long as such requirements are rationally related to a legitimate State interest.

3. Yes, so long as such requirements are rationally related to a legitimate State interest.

4. Yes, although such a law is probably unnecessary given current federal law. Such a requirement would not violate HIPAA, given that HIPAA regulations allow a healthcare provider to provide protected health information to public officials where the healthcare provider has a good faith belief that disclosure is necessary to protect public health.

5. No, so long as any such requirement is rationally related to a legitimate State interest.

ANALYSIS

1-3. Tennessee has an extensive regulatory process governing the issuance and continued possession of driver's licenses. *See* Tenn. Code Ann. §§ 50-50-102 to 805. The law is well settled that the ability to drive a motor vehicle on public highways is a revocable privilege that is granted upon compliance with the State's statutory licensing provisions. *State v. Booher*, 978 S.W.2d 953, 955-56 (Tenn. Crim. App. 1997). Tennessee, under its inherent police power, may set reasonable conditions under which the privilege of operating vehicles on public highways may be exercised after a license is granted. *Id*.

Accordingly, the State of Tennessee can enact laws imposing different requirements for senior drivers to obtain or maintain a driver's license, as long as those laws are reasonable and rationally related to the State's interest in promoting public safety.[1] Under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, laws not affecting a fundamental right or a suspect classification are subject only to rational basis scrutiny. That is, such laws are constitutional if they bear some rational relation to a legitimate state interest. As the United States Supreme Court has explained:

> The initial discretion to determine what is "different" and what is "the same" resides in the legislatures of the States. A legislature must have substantial latitude to establish classifications that roughly approximate the nature of the problem perceived, that accommodate competing concerns both public and private, and that account for limitations on the practical ability of the State to remedy every ill. In applying the Equal Protection Clause to most forms of state action, we thus seek only the assurance that the classification at issue bears some fair relationship to a legitimate public purpose.

Phyler v. Doe, 457 U.S. 202, 216 (1982).

The privilege of driving a motor vehicle is not a fundamental right. *See League of United Latin American Citizens (LULAC) v. Bredesen*, 500 F.3d 523, 534-35 (6th Cir. 2007); *State v. Booher*, 978 S.W.2d at 955-56. *See also Matthew v. Honish*, 233 Fed. Appx. 563, 564 (7th Cir. 2007). The courts have also repeatedly held that age is not a suspect classification. *Kimel v. Florida Bd. of Regents*, 528 U.S. 62, 83 (2000); *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 312-13 (1976). Therefore, a law imposing enhanced requirements in order for a senior citizen to maintain his or her driving privileges is constitutional under the Equal Protection Clause if it is rationally related to any of the Tennessee's legitimate interests, of which public safety is one.

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[1] In fact, as of 2007, a majority of states had imposed "more stringent licensing requirements" for elderly drivers than for other drivers. Garrick Aplin, *Elderly Drivers: Balancing Public Safety with Permanent Personal Mobility*, 87 Wash. U. L. Rev. 379, 390 (2009). *See also* Jennifer L. Klein, *Elderly Drivers: The Need for Tailored License Renewal Procedures*, 3 Elder L.J. 309 (1995).

For example, tailoring a driver's examination for a senior driver to test depth and distance perception, or requiring more frequent testing once a person reaches a certain age, seem to bear some rational relation to the State's interest in public safety, especially given the United States Supreme Court's recognition in *Murgia* that "physical ability generally declines with age." *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. at 315. Similarly, a requirement of retesting in the event of multiple accidents, or upon the complaint of a "family member," would also have a rational basis although such a requirement would require further definition of the term "family member."

While neither federal nor Tennessee law prohibit the imposition of rational differing standards for driver licensure based on age, any citizen whose driving privilege is revoked must be afforded due process, given that possession of a driver's license is a constitutionally protected individual property interest under the Due Process Clause of the Fourteenth Amendment. *Bell v. Burson*, 402 U.S. 535, 539 (1971). Where a state seeks to terminate a person's driving privilege, the state must afford notice and opportunity for a meaningful hearing appropriate to the nature of the case. *Id*. at 541. This hearing may be administrative in nature and may occur after the suspension of driving privileges. *Dixon v. Love*, 431 U.S. 105, 115 (1977).

4-6. In response to the remaining questions posed, HIPAA poses no obstacle to enacting a law allowing physicians to disclose patient information to public safety officials should a physician discern that a patient's health status might adversely impact his or her ability to drive. Indeed, the privacy rules enacted by the United States Department of Health and Human Services pursuant to HIPAA allow medical providers to disclose patient information under the circumstances contemplated by the opinion request. Disclosure of Personal Health Information ("PHI") by a healthcare provider is permitted where the provider "in good faith, believes the use or disclosure: (i)(A) is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and (B) is to a person or persons reasonably able to prevent or lessen the threat." 45 C.F.R. § 164.512(j) (2010). *See also* Tenn. Op. Att'y Gen. No. 04-153, at 2-3 (October 7, 2004). This regulation permits a doctor to transmit PHI to Tennessee officials responsible for driver licensure where the doctor has a good faith belief that the patient poses a serious and imminent threat to public safety. Therefore, there is no need for the General Assembly to enact a statute specifically allowing such disclosure. However, if the General Assembly is inclined to enact such a statute, it should be drafted to mirror the requirements of 45 C.F.R. § 164.512(j).

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