House
Legislative
Analysis
Section

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DRIVER LICENSE RECORDS

House Bill 5227 as passed by the House
Sponsor: Rep. Tony Stamas

House Bill 5230 as passed by the House
Sponsor: Rep. Wayne Kuipers

House Bill 5270 as passed by the House
Sponsor: Rep. Randy Richardville

Second Analysis (2-23-00)
Committee: Transportation

THE APPARENT PROBLEM:

Driver and motor vehicle records maintained by the secretary of state contain personal information for seven million Michigan households. Under current federal and state laws, the secretary of state may contract to sell bulk lists of driver and motor vehicle records, and other records that the office maintains. In order to sell the lists, the secretary of state executes written purchase contracts with the buyers. The secretary of state then fixes a market-based price for the sale of each bulk list, and the proceeds from each sale must be credited to the secretary of state's commercial look-up account, or used to defray the expense of providing the service.

In 1994 a federal law called the Driver Privacy Protection Act was passed by the U.S. Congress to restrict the sale of state lists. That law (introduced in response to the 1989 killing of actress Rebecca Schaeffer by a stalker who got her address from driver's license records), allows driver records to be disclosed for certain purposes, but it prohibits states from selling "bulk" lists of names and addresses unless citizens are allowed to opt-out--that is, to notify the drivers' license agency that they do not want their personal information included on the lists. In effect, the federal law allows citizens to opt-out as customers, by notifying the state-level government record-keepers that they do not wish to have their personal information sold to marketers.

The 1994 federal law also specified that unless states adopted similar privacy protection policies by September 13, 1997, the states would be subject to a federal civil fine of up to $5,000 per day for every day a similar program was not in place. Prompted by the federal legislation, about 25 states moved to ban or to restrict the sale of license information, in order better to protect their citizens' right to privacy. However, some states also filed suit in order to protest the federal government's intrusion into a regulatory matter that they argued should more appropriately be left to the states. (See *BACKGROUND INFORMATION*, "South Carolina Lawsuit," below.)

After the 1994 Driver Privacy Protection Act was passed by the U.S. Congress, the Michigan legislature enacted state driver privacy protection laws, Public Acts 99 - 101 of 1997 (House Bills 4700-4701 and Senate Bills 319 and 534), to more closely regulate the commercial look-up service provided by the secretary of state. Like the federal law, the Michigan statute allows disclosure of records for permissible purposes: there are 12 permissible purposes for which information can be sold. (See *BACKGROUND INFORMATION*, "Permissible Purposes," below.) And like the federal law, the Michigan statute gives citizens the opportunity to opt-out as customers for marketers or those who solicit sales: Michigan drivers can withdraw their personal records from sale when they purchase a registration for a vehicle, boat, or snowmobile; or when they apply for or renew a driver's license. To opt-out a driver completes a "List Sales Opt-Out Form." [The opt-out form can be viewed on the Department of State website at http://www.sos.state.mi.us/bdvr/opt_prn.html] Only 70,000 of Michigan's citizens have asked the state to remove their names, although the secretary of state database contains names, addresses and vehicle information for seven million households.

According to the Department of State, Michigan vehicle records have been available to the public throughout most of the last century. Today and for several decades, driver records have been available

through a commercial look-up service, and those who check the records are charged a fee of $6.55 per look-up. In fiscal year 1997-98, the Department of State collected over $27.9 million from its record look-up sales, and from the sale of "bulk" data. The vast majority of this revenue--all but $1.1 million--came from record look-up fees mostly paid by insurers so they can learn about drivers' histories before they write policies. The sale of personal information for these insurance purposes is permitted under the law, as is the sale of personal information for eleven other purposes.

However, the department also sells data in "bulk", or as name and address lists. "Bulk" information is generally purchased by direct mail marketers who use it for soliciting business, or by data processing firms who resell it to secondary purchasers. There are two rates charged for information sold in bulk, depending on whether the data requested must be sorted. Buyers are charged $16 per 1,000 records if no data-sort is required, or $64 per 1,000 records if a data-sort by category is requested. In fiscal year 1997-98, bulk sales generated about $1.1 million. Of this revenue, an estimated $400,000 came from the sale of bulk lists to those who use them to conduct surveys, to solicit, or to market goods.

In September 1999, the federal Driver Protection Privacy Act was amended to prohibit states from disseminating a person's driver's license photograph, Social Security number, and medical or disability information (what is referred to under the law as "highly restricted personal information" as opposed to "personal information") from a motor vehicle record without the express consent of the person to whom such information pertains, except for uses permitted under the act. With this amendment, federal law retains an opportunity to opt-out, and it also provides a stricter level of privacy protection for a citizen's more sensitive personal information, because the new opt-in provision prohibits the use of a citizen's driver license photograph, Social Security number, and medical or disability information, unless a citizen has given his or her permission. This provision to guarantee a stricter level of privacy protection for sensitive personal information will go into effect June 1, 2000, although some are lobbying to have it repealed.

Some observe that few Michigan citizens have elected to protect their privacy under the state's opt-out policy, so they argue that it should be repealed. They argue further that all citizens would have some privacy protection if the permitted purposes for bulk sales were limited. To that end, legislation has been suggested to repeal the opt-out policy, and to withhold the sale of bulk lists from those who would use them to solicit, conduct surveys, or market goods.

THE CONTENT OF THE BILLS:

The bills would prohibit the sale, by employees in certain state agencies, of driver and motor vehicle records to those who would use the information to conduct surveys, to market, or to solicit. In addition, the bills would eliminate the citizen opt-out policy (which was enacted as Public Act 101 of 1997 when the Michigan legislature passed Senate Bill 319 of 1997), and they would go into effect June 1, 2000.

Generally and under current law, the secretary of state may contract for the sale of lists, in bulk, of driver and motor vehicle records and other records maintained under the act, if the purchaser of the records executes a written purchase contract. The secretary of state must fix a market-based price for the sale of such lists or other records maintained in bulk, which may include personal information, and the proceeds from each sale must be credited to the department's look-up account, or used to defray the costs of list preparation and other necessary or related expenses. Under current law, an authorized recipient of personal information that he or she discloses must a) keep records for at least five years identifying each person who received personal information and the permitted purpose for which it was obtained, and b) allow a representative of the secretary of state, upon request, to inspect and copy those records. When selling lists the secretary of state may insert any reasonable safeguard, including a bond requirement, to ensure that the information furnished or sold is used only for a permissible use and that the rights of individuals are protected.

House Bill 5227 would amend the Michigan Vehicle Code (MCL 257.232) to prohibit the secretary of state or any other state agency from selling any list of information for the purpose of surveys, marketing, and solicitations. The bill also specifies that if the secretary of state furnishes a list of information to a member of the state legislature, he or she would have to charge the same fee as the fee for the sale of the information sold in bulk to others.

More specifically, House Bill 5227 would eliminate the provisions of existing law generally called the opt-out policy, that require the secretary of state to do all of the following before selling and furnishing the information for surveys, marketing, and solicitations:

- Furnish individuals with a conspicuous opportunity to be informed of their right to prohibit the disclosure of personal information about them for purposes of surveys, marketing, and solicitations through an ongoing public information campaign which must include the use of printed signs in branch offices, and notices included with application and renewal forms (to the extent that the secretary of state continues to use paper forms for these purposes), and may include periodic press releases, public service announcements, advertisements, pamphlets, notices in electronic media, and other types of notice. Each printed sign must be not less than 8½ inches wide by 11 inches high and contain a caption in not less than 46-point type. If the secretary of state furnishes notice on forms, that information must be similar to the information printed on branch office signs. The act also requires that the secretary of state review the public information campaign on an annual basis in order to update notice contents and furnish notice by more effective means.

-Provide individuals with a conspicuous opportunity, through a telephonic, automated, or other efficient system, to notify the secretary of state of their desire to prohibit the disclosure of personal information about them, for purposes of surveys, marketing, and solicitations. The secretary of state may contract with another public or private person or agency to implement this subdivision.

-Ensure that personal information disclosed in bulk will be used, rented, or sold solely for uses permitted under the act, and that surveys, marketing, and solicitations will not be directed at those individuals who in a timely fashion have notified the secretary of state that surveys, marketing, and solicitations should not be directed at them.

House Bill 5230 would amend Public Act 222 of 1972 (MCL 28.300), the act that provides for an official state personal identification card, to prohibit the secretary of state or any other state agency from selling any list of information from records maintained under the act in bulk, for the purpose of surveys, marketing, and solicitations. The bill also specifies that if the secretary of state furnishes a list of information to a member of the state legislature, he or she would have to charge the same fee as the fee for the sale of the information sold in bulk to others.

House Bill 5230 also would eliminate the provisions of existing law generally called the opt-out policy, that require the secretary of state to do all of the following before selling and furnishing the information for surveys, marketing, and solicitations:

- Furnish individuals with a conspicuous opportunity to be informed of their right to prohibit the disclosure of personal information about them for purposes of surveys, marketing, and solicitations through an ongoing public information campaign which must include the use of printed signs in branch offices, and notices included with application and renewal forms (to the extent that the secretary of state continues to use paper forms for these purposes), and may include periodic press releases, public service announcements, advertisements, pamphlets, notices in electronic media, and other types of notice. Each printed sign must be not less than 8½ inches wide by 11 inches high and contain a caption in not less than 46-point type. If the secretary of state furnishes notice on forms, that information must be similar to the information printed on branch office signs. The act also requires that the secretary of state review the public information campaign on an annual basis in order to update notice contents and furnish notice by more effective means.

-Provide individuals with a conspicuous opportunity, through a telephonic, automated, or other efficient system, to notify the secretary of state of their desire to prohibit the disclosure of personal information about them, for purposes of surveys, marketing, and solicitations. The secretary of state may contract with another public or private person or agency to implement this subdivision.

-Ensure that surveys, marketing, and solicitations will not be directed at those individuals who in a timely fashion have notified the secretary of state that surveys, marketing, and solicitations should not be directed at them. Instead, the bill would require that the secretary of state ensure that personal information disclosed in bulk will be used, rented, or sold solely for uses permitted under the act.

House Bill 5270 would amend the Natural Resources and Environmental Protection Act (MCL 324.80130c, 324. 80315c, 324.81114c, and 324.82156c) to prohibit the secretary of state from selling any list of information for the purpose of surveys, marketing, and solicitations.

Under House Bill 5270, the secretary of state could continue to contract for the sale of lists, unless the information was to be used for surveys, marketing, and solicitations. The bill also specifies that if the secretary of state furnishes a list of information to a member of

the state legislature, he or she would have to charge the same fee as the fee for the sale of the information sold in bulk to others.

More specifically, House Bill 5270 would eliminate the provisions in four sections of the act generally referred to as the opt-out policy, that require the secretary of state to do all of the following before selling and furnishing the information for surveys, marketing, and solicitations:

- Furnish individuals with a conspicuous opportunity to be informed of their right to prohibit the disclosure of personal information about them for purposes of surveys, marketing, and solicitations through an ongoing public information campaign which must include the use of printed signs in branch offices, and notices included with application and renewal forms (to the extent that the secretary of state continues to use paper forms for these purposes), and may include periodic press releases, public service announcements, advertisements, pamphlets, notices in electronic media, and other types of notice. Each printed sign must be not less than 8½ inches wide by 11 inches high and contain a caption in not less than 46-point type. If the secretary of state furnishes notice on forms, that information must be similar to the information printed on branch office signs. The act also requires that the secretary of state review the public information campaign on an annual basis in order to update notice contents and furnish notice by more effective means.

-Provide individuals with a conspicuous opportunity, through a telephonic, automated, or other efficient system, to notify the secretary of state of their desire to prohibit the disclosure of personal information about them, for purposes of surveys, marketing, and solicitations. The secretary of state may contract with another public or private person or agency to implement this subdivision.

-Ensure that personal information disclosed in bulk will be used, rented, or sold solely for uses permitted under the act, and that surveys, marketing, and solicitations will not be directed at those individuals who in a timely fashion have notified the secretary of state that surveys, marketing, and solicitations should not be directed at them.

BACKGROUND INFORMATION:

South Carolina lawsuit. Three states--South Carolina, Wisconsin, and Oklahoma--filed separate suits to argue the United States Congress had exceeded its authority when it imposed the federal Drivers Privacy Protection Act on the states. The suits in Wisconsin and Oklahoma were denied on appeal by their respective U. S. Circuit courts. South Carolina's suit was affirmed by the 4th U.S. Circuit Court, but then reversed by the United States Supreme Court.

Many states, including South Carolina, have their own laws permitting motor vehicle bureaus to sell lists that include names, addresses, phone numbers, and identification numbers. Indeed, according to reports, South Carolina's disclosure law is substantially similar to Michigan's, including an opt-out provision. However, in a fight over federalism, South Carolina Attorney General Charles Condon challenged the constitutionality of the Driver's Privacy Protection Act (DPPA) in the U.S. District Court for South Carolina, and that court's decision held that the DPPA violated the 10th and 11th Amendments to the U.S. Constitution. On appeal to the Court of Appeals for the 4th Circuit, the district court judgment was affirmed when the 4th Circuit ruled that Congress could not justify passage of the law through either its power to regulate interstate commerce, or its authority to enforce the provisions of the 14th Amendment.

U.S. Attorney General Janet Reno appealed to the U.S. Supreme Court (See Reno v. Condon, No. 98-1464), and the U.S. Supreme Court reversed the decision of the 4th Circuit. In effect the opinion held that the Congress has the authority, under both section 5 of the 14th Amendment, and the Commerce Clause, to enact laws to prevent the violation of rights, including the right to privacy. The opinion held that the federal Driver's Privacy Protection Act had imposed virtually no burden on state governments by prohibiting states from acting in a manner that endangers the rights of its citizens, most especially women who have the right to be free from stalking and violence.

Permissible purposes to sell personal information. Under both federal and state law, personal information records can be sold for certain purposes. Specifically, the list of purposes is described in detail in the Michigan Vehicle Code at MCL 257.208c. There, 12 permissible purposes are described for which personal information that is contained in a record maintained under the Michigan Vehicle Code may be disclosed by the secretary of state. Disclosure is allowed if the information is intended for use by: a) federal state, or local governmental agencies; b) in connection with matters of motor vehicle and driver safety such as recalls and advisories, or auto theft; c) in the normal

course of business by a legitimate business; d) in connection with a civil, criminal, administrative or arbitration proceeding in a court, including use for service of process; e) in legitimate research activities and in preparing statistical reports for commercial, scholarly, or academic purposes by a *bona fide* research organization; f) by an insurer or insurance support organization; g) in providing notice to the owner of an abandoned, towed, or impounded vehicle; h) by a licensed private detective or private investigator; i) by an employer, or the employer's agent or insurer; j) by a car rental business; k) in connection with the operation of private toll transportation facilities; and, l) by a news medium (newspaper, magazine, periodical, news service, broadcast network, television station, radio station, cable caster, or entity employed by any of the foregoing) in the preparation and dissemination of a report related in part or in whole to the operation of a motor vehicle or public safety.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the combined fiscal impact of the bills is an estimated $400,000 reduction in state revenue credited to the commercial look-up account. (2-7-00)

ARGUMENTS:

For:

This legislation reveals the tension between two important policy goals of the state government: protecting citizen privacy vs. generating revenue from list sales. Of the two goals, privacy protection is more important. Government officials at every level must take greater care to stand vigilant as they use technology; to pay attention to the impact all highly technologic devices may have on government's responsibility to protect citizens' personal privacy; and, to act when privacy rights have been too far eroded. According to reports, many citizens have no idea the state sells information to mass marketers, or that since 1997 they have had the right as citizens to opt-out as customers when their personal information is sold to those who would use it to solicit sales. When informed of the state's practice of selling lists, they disapprove. The bills would help to protect Michigan citizens' right to privacy by prohibiting the sale of bulk lists containing citizens' personal information to those who use the information to market goods.

Response:

In 1997 when Michigan had to comply with the federal privacy protection law or risk a stiff penalty, the legislature chose to implement an opt-out policy in order to comply. Some would say that the law could have been stronger, and that efforts to make the opt-out policy well-known to citizens could have been greater. In contrast to Michigan's approach, other states have imposed more restrictions than the federal act has mandated. If state government is really interested in privacy protection, the legislature could follow other states that have banned list sales, or that far more severely restrict list access. According to the *Detroit Free Press* (1-12-00), those states that have banned or limited the sale of driver's license information to marketers include California, Illinois and Pennsylvania. Further, 18 states have outlawed the sale of lists culled from vehicle records.

For:

Government should behave more like a well-run business--recover its costs when it provides services, and generate revenue at every opportunity. Michigan has registered a steady increase in the revenue from list sales to direct marketers, from $245,650 in 1983 to $1,113,807 during the last budget year. What's more, the secretary of state generates nearly $27 million from permitted list sales to other businesses, when the sale of personal information is permitted by law. This is a healthy sign that the Department of State, itself, is being operated following sound business principles. This legislation gives state officials a way to ensure that revenue from list sales will continue to flow to state budget coffers, and yet it acknowledges citizens' right to privacy. Realistically, though, individuals' rights to privacy have been seriously eroded by technological advances during the past three decades. For many, this reality is difficult to acknowledge; troubling to accept. A modest amount of privacy protection seems possible with this legislation, although total privacy could not be ensured. But most important, permitted list sales and the revenue they generate would continue, despite the fact that the revenue would be somewhat reduced.

For:

These bills would eliminate Michigan's opt-out policy--provisions that are now in law and that have been in effect since 1997. The opt-out policy allows citizens to withdraw their personal information from bulk lists when those lists are sold. These provisions should be repealed, because they will be unnecessary, and perhaps unworkable, come June 1 when the federal government's new opt-in policy will go into effect. Beginning June 1, the new federal amendment will require that citizens opt-in to share their "highly restricted personal information." That is to say, they

must give their "express consent" when the secretary of state shares their driver's license photo, Social Security number, and medical or disability information.

Response:

It is true that the federal government has a new opt-in policy set to go into effect June 1, 2000 (although some businesses are lobbying to repeal it). The federal government's new opt-in policy is not incompatible with Michigan's opt-out policy. Together, both policies give Michigan citizens effective privacy protection.

Against:

These bills reduce privacy protection, and they should be amended. Michigan should not repeal the opt-out policy, as these bills propose. Instead, the opt-out policy should be retained, so citizens can choose whether they want their personal information included on lists that are sold for permitted purposes. Then, in addition, the law should prohibit the sale of lists to those who would use citizens' personal information to market, to solicit, or to conduct surveys.

Under the current law, citizens can withdraw their personal information from sale. By opting out, they can direct the secretary of state to withhold their "personal information", which under the law includes name, address (but not zip code), driver license number, telephone number, and then additionally four kinds of information that also are defined as "highly restricted personal information": photograph or image, Social Security number, digitized signature, and medical and disability information. Citizens should have this right. If these bills are passed, citizens will lose their opportunity to opt-out. Indeed, the opt out policy is repealed, as these bills propose, Michigan citizens will have less privacy protection when the bills go into effect than they have today.

Against:

The current opt-out policy has served the state well, and would meet the "substantial compliance" provision contained in the federal law if the policy were modified. The legislature should make that change rather than act prematurely to pass this legislation, since it could put some small companies out of business, and it will work a financial hardship on others. For example and according to committee testimony, a small company (30 employees and $4 million in annual sales) that supplies parts for older vehicles (described as those having a market value under $5,000), uses the lists provided by the secretary of state to identify the owners of particular makes and models of older vehicles, and then sends to those owners a Parts and Supply Catalog that offers hard-to-find parts at far below dealership or even salvage yard prices. In addition, a spokesman for a driver testing company that conducts 5,300 tests each year testified he would be unable to notify potential new drivers of their responsibility to get driver training classes. Further, the legislation will prevent all businesses, large and small, from receiving valuable information, as noted by a spokesman for a large company, headquartered in Michigan since 1870, whose main purpose is to organize all kinds of vehicle information (but not driver license information) for the auto industry.

House Bill 5227 should be amended in the way that Connecticut's Driver Privacy Protection Act was amended last year: to allow the sale of lists for "motor vehicle product and service communications." It also should be amended to allow driver training instructors to communicate with new drivers, since Michigan has privatized driver training and instruction.

POSITIONS:

The Office of the Secretary of State supports the bills. (2-23-00)

Michigan Driver Testing opposes the bills. (2-23-00)

Analyst: J. Hunault

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.