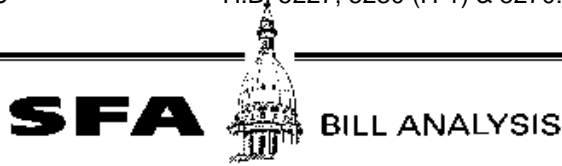


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House Bill 5227 (as reported without amendment)
House Bill 5230 (Substitute H-1 as reported without amendment)
House Bill 5270 (as reported without amendment)
Sponsor: Representative Tony Stamas (House Bill 5227)
Representative Wayne Kuipers (House Bill 5230)
Representative Randy Richardville (House Bill 5270)
House Committee: Transportation
Senate Committee: Transportation and Tourism

Date Completed: 3-31-00

RATIONALE

The Michigan Vehicle Code permits the Secretary of State to sell lists of driver and motor vehicle records for surveys, marketing, and solicitations as well as for other purposes specified in the law. Similar provisions apply to records concerning official personal identification cards, and watercraft, snowmobile, and off-road recreational vehicle records. Before selling any list of information for surveys, marketing, and solicitations, the Secretary of State is required to inform people of their right to prohibit the disclosure of personal information about them for this purpose. This commonly is known as the "opt-out" approach, which was enacted in 1994 in response to Congressional enactment of the Driver Privacy Protection Act (DPPA). That Act requires states to restrict the disclosure of personal information in vehicle records to specific permissible uses, and prohibits states from selling or furnishing data in bulk to third parties unless citizens are given a conspicuous opportunity to notify a state's department of motor vehicles that they do not want their names, addresses, and other personal information sold for use in surveys, marketing efforts, and solicitations. States are subject to civil fine of \$5,000 for each day of substantial noncompliance with the DPPA.

Last fall, Congress amended the DPPA to replace the opt-out approach with an "opt-in" procedure. As of June 1, 2000, states may not assume that drivers consent to disclosure if they fail to take advantage of an opportunity to opt out. Instead, states must obtain a driver's affirmative consent in order to disclose his or her personal information for use in surveys, marketing, solicitations. (The DPPA defines "personal information" as information that identifies an individual, including a photograph, Social Security number, driver identification number, name, address, telephone number, and medical or disability information, but not information on vehicular accidents, driving violations, or driver's status.) The recent amendments also prohibit states from

disseminating an individual's photograph, Social Security number, and medical or disability information from motor vehicle records, without the person's express written consent, except for certain purposes.

In Michigan, it has been suggested that the State should increase consumers' privacy by preventing the sale of lists for marketing purposes. Although the current statutory language regarding the sale of lists is permissive, the Secretary of State's office reports that it does not have the authority to deny disclosure. According to a 1979 Opinion of the Attorney General (No. 5500), "Inasmuch as the Legislature has specifically authorized the Secretary of State to sell...motor vehicle registration lists, it may not be justifiably contended that the release of this information would constitute a clearly unwarranted invasion of personal privacy. Thus, by enactment of specific legislation dealing with the motor vehicle registration lists, the Legislature has prevented the Secretary of State from exercising discretion as to whether or not to release this information." Therefore, preventing the disclosure of lists evidently would require a statutory change.

CONTENT

The bills would amend provisions on the sale and disclosure information maintained by the Secretary of State (SOS) under various laws to do the following:

- **Prohibit the SOS or any other State agency from selling any list of information maintained under the laws for the purpose of surveys, marketing, and solicitations.**
- **Delete requirements that people be informed of their right to prohibit disclosure of personal information for surveys, marketing, and solicitations and given an opportunity to notify the Secretary of State of their desire not to**

have this information disclosed.

-- **Provide that if the SOS gave a member of the State Legislature a list of information from the records maintained under the laws, the Secretary of State would have charge the same fee as the fee for the sale of bulk records.**

The bills would take effect June 1, 2000. A more detailed description of the bills follows.

House Bill 5227

The Michigan Vehicle Code permits the Secretary of State to contract for the sale of lists of driver and motor vehicle records and other records maintained under the Code in bulk, in addition to those lists distributed at cost or at no cost for purposes specified in the Code (257.803c(3)), as well as for surveys, marketing, and solicitations. The SOS also is required to fix a market based price for the sale of these lists or other records maintained in bulk, which may include personal information, and the proceeds from each sale must be credited to the Secretary of State's commercial look-up account. The bill would delete from these provisions the reference to surveys, marketing, and solicitations.

The Code permits the SOS, upon request, to furnish a list of information from the records maintained under the Code to a Federal, State, or local governmental agency, or to a private person or entity acting on behalf of a governmental agency for use in carrying out the agency's functions. Under the bill, if the SOS furnished a list of information under this provision to a member of the State Legislature, the SOS would have to charge the same fee as the fee for the sale of bulk information.

Currently, before selling and furnishing any list of information for surveys, marketing, and solicitations, the SOS is required to implement methods and procedures that furnish persons with a conspicuous opportunity to be informed of their right to prohibit the disclosure of personal information about them for 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 applications and renewal forms to the extent that the Secretary of State continues to use paper forms for those purposes, and may include periodic press releases, public service announcements, advertisements, pamphlets, notices in electronic media, and other types of notice. In addition, the SOS is required to review the public information campaign on an annual basis in order to update notice content and furnish notice by more effective means. Also, before selling and furnishing

a list of information for surveys, marketing, and solicitations, the SOS is required to give individuals 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 surveys, marketing, and solicitations. The bill would delete all of these provisions.

In addition, before selling or furnishing any list for surveys, marketing, and solicitations, the Secretary of State is required to ensure that personal information disclosed in bulk will be used, rented, or sold solely for uses permitted under the Code, and that surveys, marketing, and solicitations will not be directed at those persons who in a timely fashion have notified the SOS that surveys, marketing, and solicitations should not be directed at them. The bill would delete these references to surveys, marketing, and solicitations. (The SOS would still be required to ensure that personal information sold in bulk would be used, rented, or sold solely for permitted uses.)

Currently, an authorized recipient of personal information disclosed under the Code who resells or rediscloses the information for survey, marketing, and solicitations is required to make and keep for at least five years records identifying each person who received personal information, and allow a representative of the Secretary of State, upon request, to inspect and copy records identifying each person who received the personal information. The bill would delete the reference to survey, marketing, and solicitations. Under the bill, these requirements would apply to a person who resold or redisclosed the personal information for any of the permissible purposes described in the Code.

House Bill 5230 (H-1)

The bill would amend Public Act 222 of 1972, which provides for the issuance and use of an official personal identification card, to prohibit the SOS or any other State agency from selling any list of information maintained under the Act for the purpose of surveys, marketing, and solicitations. The bill also would make other revisions similar to those proposed by House Bill 5227.

House Bill 5270

The bill would amend Part 801 (Marine Safety), Part 803 (Watercraft Transfer and Certificate of Title), Part 811 (Off-Road Recreation Vehicles), and Part 821 (Snowmobiles) of the Natural Resources and Environmental Protection Act to prohibit the SOS or any other State agency from selling any list of information maintained under the Act for the purpose

of surveys, marketing, and solicitation. The bill also would make other revisions similar to those proposed by House Bill 5227.

MCL 257.232 (H.B. 5227)

28.300 (H.B. 5230)

324.80130c et al. (H.B. 5270)

BACKGROUND

Permissible Uses under Michigan Law

The Michigan Vehicle Code, Public Act 222 of 1972, and the Natural Resources and Environmental Protection Act allow the Secretary of State to disclose personal information in a record maintained under the law as follows:

- For use by a governmental agency in carrying out its functions, or by a private person or entity acting on behalf of a governmental agency in carrying out its functions.
- For use in connection with matters of vehicle and operator safety or vehicle theft; vehicle emissions; vehicle product alterations, recalls, or advisories; vehicle performance monitoring; vehicle market research activities, including survey research; and the removal of nonowner records from the original records of vehicle manufacturers.
- For use in the normal course of business by a legitimate business, but only to verify the accuracy of personal information submitted by an individual to the business, and if the information as submitted is no longer correct, to obtain the correct information, for the sole purpose of preventing fraud by pursuing legal remedies against, or recovering a debt against, the individual.
- For use in connection with a civil, criminal, administrative, or arbitration proceeding in a Federal, State, or local court or governmental agency or before a self-regulatory body, or pursuant to an order of a Federal, State, or local court, an administrative agency, or a self-regulatory body.
- For use in legitimate research activities and in preparing statistical reports for commercial, scholarly, or academic purposes by a bona fide research organization, if the personal information is not published, redisclosed, or used to contact individuals.
- For use by an insurer or insurance support organization, or by a self-insured entity, in connection with claims investigating activity, antifraud activity, rating, or underwriting.
- For use in providing notice to the owner of an abandoned, towed, or impounded vehicle.
- For use by a licensed private detective or private investigator or by a licensed private security guard agency or alarm system contractor, only for a purpose permitted under these provisions.
- For use by a car rental business for the purpose of making rental decisions.
- For use by a news media in the preparation and dissemination of a report related to the operation of a motor vehicle or public safety.
- For any use by an individual requesting information pertaining to himself or herself or requesting in writing that the SOS provide information pertaining to himself or herself to the individual's designee.

The Michigan Vehicle Code and Public Act 222 also allow the disclosure of personal information for use by an employer to obtain or verify information relating to the holder of a commercial driver license or to the holder of a chauffeur's license. In addition, the Code allows personal information to be disclosed for use in

connection with the operation of private toll transportation facilities.

Disclosure under the DPPA

The permissible uses for which personal information may be disclosed under the Driver Privacy Protection Act are essentially the same as those allowed under the Michigan Vehicle Code (although the DPPA does not include use by a news media).

In provisions that will change as of June 1, the DPPA allows the disclosure of personal information for "any other use in response to requests for individual motor vehicle records" if the motor vehicle department has provided in a clear and conspicuous manner on forms for issuance or renewal of operator's permits, titles, registrations, or identification cards, notice that personal information collected by the department may be disclosed to any business or person, and has provided in a clear and conspicuous manner on those forms an opportunity to prohibit that disclosure. In addition, personal information may be disclosed "for bulk distribution for surveys, marketing or solicitations if the motor vehicle department has implemented methods and procedures to ensure that

- (A) individuals are provided an opportunity, in a clear and conspicuous manner, to prohibit such uses; and
- (B) the information will be used, rented, or sold solely for bulk distribution for surveys, marketing, and solicitations, and that surveys, marketing, and solicitations will not be directed at those individuals who have requested in a timely fashion that they not be directed at them."

Beginning June 1, the DPPA will allow the disclosure of personal information for these purposes only if "the State has obtained the express consent of the person to whom such personal information pertains".

In addition, as of June 1, the DPPA will prohibit the dissemination of a person's driver's license photograph, Social Security number, and medical or disability information from a motor vehicle record without the express consent of the person to whom the information pertains. This restriction does not apply to the following:

- Use by a government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, state, or local agency in carrying out its functions.
- Use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, state, or local court or agency or before any self-regulatory body, or pursuant to an order of a Federal, state, or local court.

- Use by any insurer or insurance support organization, or by a self-insured entity, in connection with claims investigation activities, antifraud activities, rating, or underwriting.
- Use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license.

On January 12, 2000, the United States Supreme Court decided a challenge to the DPPA by the State of South Carolina (*Reno, et al. v. Cordon, et al.*, 98-1464). The Court held that the DPPA is a proper exercise of Congress's authority to regulate interstate commerce under the Commerce Clause, and does not violate principles of federalism contained in the Tenth Amendment.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

As mandated by Federal law, the Michigan Vehicle Code requires the Secretary of State to inform citizens about their right to prevent disclosure of personal information for the purpose of surveys, marketing, and solicitations. The Department of State's website includes information about the opportunity to opt-out, and allows Internet users to respond electronically or print out a form and mail it in. The Department also mentions the possibility of opting-out on license renewal forms and in its official literature, and posts signs in branch offices. These efforts to publicize the opt-out option have been criticized as inadequate. According to an article in the *Detroit Free Press* (1-19-00), at the beginning of this year, only 69,000 Michigan drivers--out of nearly 7 million--had elected to opt out. In states that use more aggressive methods to inform drivers, however, most people apparently do opt out. Texas, for example, mails vehicle owners a separate opt-out form with renewals, and requires every clerk at branch offices to ask drivers who do business in person whether they want their names in databases for sale, according to the *Detroit Free Press*.

Evidently, the sale of lists from the Secretary of State's records is fairly lucrative. The *Detroit Free Press* reports that these sales generated \$1.1 million in 1999, and \$6.2 million since 1992. The State apparently sells the information, at fees ranging from \$16 to \$64 per 1,000 names, to such businesses as mortgage companies, car dealers, health insurers, real estate brokers, and political consultants. Proceeds from the sale of lists or other records maintained in bulk must be credited to the Secretary of State's commercial look-up account.

Although the government can legitimately require people to divulge personal information in order to receive a driver's license or register a vehicle, the State should not be in the business of selling that information, particularly to mass marketers. At the Federal level, Congress has taken steps to increase citizens' privacy protections, by prohibiting states from disclosing a driver's personal information for bulk distribution for surveys, marketing, or solicitations, or for any use other than those specifically permitted, without obtaining the driver's express consent. In Michigan, the bills would prohibit the sale of lists altogether for the purpose of surveys, marketing, and solicitations.

Response: Although the Secretary of State's revenue from selling information may appear sizeable, only about 40% of it is attributable to surveys, marketing, and solicitations. The SOS also may sell lists of records for the permissible uses identified in the law. The bills would not affect this practice.

Opposing Argument

The bills would create a hardship for businesses that rely on bulk lists for promotional purposes. According to the *Detroit Free Press*, the Secretary of State's office has said that about 83% of the requests for lists in 1998-99 came from small Michigan businesses. Making up for the loss of the lists would require a lot of expensive advertising that many small businesses cannot afford.

Rather than replacing the opt-out approach with a blanket prohibition against the sale of lists for surveys, marketing, and solicitations, it has been suggested that the State permit the bulk sale of lists for the limited purpose of "motor vehicle product and service communications" (as Connecticut reportedly allows), and to enable private driver training schools to communicate with potential students. After all, the DPPA imposes a penalty for "substantial noncompliance", but does not require strict compliance with the letter of the law.

Legislative Analyst: S. Lowe

FISCAL IMPACT

Due to fewer look-ups, the State could incur a loss of some look-up fee revenue. According to the Department of State, the provisions of these bills could result in a \$400,000 reduction in revenue to the look-up fee account. There would be no impact on local units of government.

Fiscal Analyst: E. Limbs

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.