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House Bill 5724 (Substitute S-2)
Sponsor: Representative Kelly Breen
House Committee: Judiciary
Senate Committee: Civil Rights, Judiciary, and Public Safety

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INTRODUCTION

The bill would allow a judge to request that a public body or person remove or not post personally identifying information about the judge or the judge's family. Personal identifying information would include date of birth, address, State or Federal information, and information pertaining to daily life, among other things. A public body or person that had already posted such information would have to remove it within five business days of receiving a request. The bill would allow a judge or judge's immediate family member to commence a civil action if a public body or person did not comply with the request. Additionally, the bill would exempt from its provisions personal identifying information that was relevant to matters of public concern, that the judge or immediate family member had voluntarily published, or that was collected in relation to specified activities like credit reports or motor vehicle records, among other exemptions.

The bill would take effect 180 days after its enactment.

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

The bill is a companion bill to Senate Bill 871 of the 2023-2024 Legislative Session.

FISCAL IMPACT

The bill could have a negative but minimal fiscal impact on State and local governments, the State Court Administrative Office (SCAO), and local court systems. Depending on the number of State and local governments that actually do post judges' personally identifying information online, some costs could be incurred to remove such information or appear in court once served with a summons. The SCAO could incur minor costs to make requests to remove personally identifying information on behalf of judges or justices. Local court systems could see an increase in filings or hearings that could incur administrative costs under the language of the bill. None of these costs for State or local systems are expected to be excessive and likely could be absorbed by existing appropriations.

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CONTENT

The bill would enact the "Judicial Protection Act" to do the following:

- Allow a judge to request that a public body or person remove or not post the judge's or judge's family's personal identifying information.**
- Require the SCAO to prescribe a request form.**
- Require a public body or person that had already posted a judge's or family member's personal information to remove that information within five business days of receiving a request.**
- Allow the SCAO to submit a request on behalf of a State court judge.**
- Specify that the Act would not apply to personal identifying information that was a matter of public concern, was voluntarily published by the judge or the judge's immediate family member, or was used for other specified activities**
- Allow a judge or judge's family member to commence a civil action if a public body or person were not complying with a request and prescribe the process to compel compliance and seek injunctive relief.**

Definitions

"Judge" would mean any of the following:

- A State court judge, which includes only a judge or justice who is serving by election or appointment on the district court, probate court, circuit court, Court of Appeals, or Supreme Court of the State.
- A Federal judge as that term is defined in the Daniel Aderl Judicial Security and Privacy Act of 2022, Public Law 117-263, or a senior, recalled, or retired Federal judge, and who serves, served, or has a residential address in the State.
- A judge serving on a tribal court for a Federally-recognized tribe located in the State.

(Under the Daniel Aderl Judicial Security and Privacy Act of 2022, a Federal judge includes a United States (US) Supreme Court Justice or judge of the US and the following appointed judges: a) bankruptcy judge; b) US magistrate judge; c) a judge confirmed and empowered by statute in any common wealth, territory, or possession to perform the duty of Federal judge; d) a US Federal Claims Judge; e) US Court of Appeals for Veterans Claims judge; e) a US Tax Court judge; or f) a special trial judge of the US Tax Court. Additionally, under Public Law 117-263 a Federal Judge includes a military judge.)

"Personal identifying information" would mean at least one of the following:

- Date of birth, unless requested through the SCAO to verify a judge is under 70 years of age for appointment or election purposes.
- Except for the city and township of residence, permanent residential address.
- Address of other property owned.
- Home or cellular telephone number.
- State identification number or driver license number.
- Social Security number.
- Personal email address.
- Federal or State tax identification number.
- Personal credit, charge, or debit card information.
- Bank account information, including account or PIN numbers.
- License plate number or other unique identifier of a vehicle that is owned, leased, or regularly used by a judge or a judge's immediate family member.

- Current or future school or day-care information, including the name or address of the school or day care attended, schedule of attendance, or route taken to or from the school or day care by a judge or a judge's immediate family member.
- Information on the employment location, except a courthouse, of a judge or a judge's immediate family member including the name or address of the employer, employment schedules, or routes taken to or from the employer.

"Public body" would mean any of the following:

- A State officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the Executive Branch of the State government, excluding the Governor or Lieutenant Governor, the Executive Office of the Governor or Lieutenant Governor, or employees of the Executive Office.
- An agency, board, commission, or council in the Legislative Branch of the State government.
- A county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency.

Additionally, the term would include any other body created by State or local authority or that is primarily funded by or through State or local authority. The term would not include the judiciary unless approved by the Supreme Court, including the office of the county clerk and its employees when acting in the capacity of clerk to the circuit court.

"Person" would mean individual, corporation, limited liability company, partnership, firm, organization, association, or other legal entity but does not include a public body.

"Immediate family member" would mean any of the following whose permanent residence is the same as the judge's permanent residence:

- The judge's spouse.
- The judge's child.
- The judge's parent.
- Any other familial relative of a judge.

"Publicly post or display" would mean to communicate or otherwise make personal identifying information available to the general public.

"Residential address" would mean the place that is the settled home or domicile at which an individual legally resides and is a residence as that term is defined in Section 11 of the Michigan Election Law. (Under the Michigan Election Law, "residence" means that place at which a person habitually sleeps, keeps his or her personal effects, and has a regular place of lodging. If a person has more than one residence, or if a person has a residence separate from that of his or her spouse, that place at which the person resides the greater part of the time is his or her official residence.)

"Transfer" would mean to sell, license, trade, or exchange for consideration to personal identifying information of a judge or judge's immediate family member.

Judicial Request Form for Confidentiality

Under the Act, a judge could request that a public body or person not publicly post or display the personal identifying information of that judge or a judge's immediate family member.

To make the request, a judge would have to submit the request in writing, on a form prescribed by SCAO, to a public body to remove a public posting or display of personal identifying information of the judge or the judge's immediate family member. The form would have to include proof of the judge's office and identity and the personal identifying information of the judge or the judge's immediate family member that the judge desired to protect.

Under the Act, a *public body* that had received a request could not publicly post or display or provide to a person the specified personal identifying information of a judge or a judge's immediate family member, as applicable. A public body that had already publicly posted or displayed the specified personal identifying information would have to remove the personal identifying information within five business days after receiving the request. The Act would not require a public body to permanently delete personal identifying information that was not accessible to the public. Additionally, a public body could comply with a request by redacting the personal identifying information that was publicly posted or displayed or by masking the entire contents of a document or record that contained the specified personal identifying information. The bill would specify that this provision would not alter or amend a public body's obligations under the Freedom of Information Act (FOIA).

A *person* that had received a request could not publicly post, display, or transfer the specified personal identifying information of a judge or a judge's immediate family member, as applicable. A person that had already publicly posted or displayed the personal identifying information would have to remove the personal identifying information within five business days after receiving the request.

A written request provided to a public body or person would have to remain in force and effect until the judge provided a signed written request to rescind or modify the prior request.

On the written delegation of authority by a State court judge to SCAO, SCAO could submit a written request to a public body or person on behalf of a judge. A written request submitted on behalf of a judge by a State court judge would have to be given the same force and effect as a written request submitted by a judge.

Additionally, if a judge or judge's family member provided a written request to the office of the county register of deeds, the request would have to include a list of all instruments to be protected by liber and page or other unique identifying number.

Personal Identifying Information Exemptions

The Act would specify that to comply with Section 19 of Article VI of the State Constitution of 1963, a judge's date of birth could be obtained by any person by contacting SCAO.¹

The Act specifies that it would not apply to any of the following:

- The display of the personal identifying information of a judge or a judge's immediate family member if the information were relevant to and displayed as part of a news story, commentary, editorial, or other speech on a matter of public concern.
- After the Act's effective date, personal identifying information voluntarily published by the judge or the judge's immediate family member.
- The dissemination of personal identifying information made at the request of the judge or judge's immediate family member that was necessary to effectuate that request.

¹ Section 19 of Article VI of the State Constitution of 1963 prohibits a person from being appointed or elected to a judicial office after reaching 70 years of age.

- The use of personal identifying information internally to provide access to businesses under common ownership or affiliated by corporate control, or to sell or provide data for a transaction or service requested by or that concerned the individual whose information was being transferred.
- The provision of publicly available personal identifying information by a real-time or near-real-time alert service for a health or safety purpose.
- The use of personal identifying information by a consumer reporting agency subject to the Federal Fair Credit Reporting Act.²
- The use of personal identifying information by a commercial entity engaged in the collection, maintenance, disclosure, sale, communication, or use of personal identifying information bearing on a consumers credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living by a consumer reporting agency, furnisher, or user that provided information for use in a consumer report, and by a user of a consumer report to the extent the activity was regulated and authorized under the Federal Fair Credit Reporting Act.
- The use of personal identifying information by a commercial entity that used such information that was collected, processed, sold, or disclosed in compliance with the Federal Drivers Privacy Protection Act³.
- The use of personal identifying information subject to the Gramm-Leach-Bailey Act⁴.
- The use of personal identifying information by a financial institution, an affiliate or affiliates of a financial institution, or an independent contractor acting on behalf of a financial institution.
- The use of personal identifying information by an entity covered by the privacy and regulations under Section 1320d-2(c) of the Health Insurance Portability and Accountability Act (HIPAA).⁵
- The collection and sale or licensing of personal identifying information incidental to conducting any of the exemptions described above.
- A public body providing a person access to the personal identifying information incidental to conducting any of the exemptions described above.

Any personal identifying information covered by a judge's written request for protection of personal identifying information would be exempt from disclosure under FOIA by the public body that received the written request.

Civil Action for Noncompliance

If a public body or a person did not comply with a written request within five days of receipt of that request, the judge or the judge's immediate family member could commence a civil action to compel compliance or to enjoin further noncompliance with the Act.

An action for injunctive relief against a local public body or person would have to be commenced in the circuit court, and venue would be proper in any county in which the judge served. An action for an injunction against a State public body would have to be commenced in the court of claims. If a judge or a judge's immediate family member commenced an action for injunctive relief, the judge or the judge's immediate family member would not be required

² The Fair Credit Reporting Act generally governs the collection, maintenance, and use of personal identifying information as part of certain credit reports and consumer reports.

³ The Federal Drivers Privacy Protection Act requires the collection and use of information for motor vehicle records allowing use of that information for law enforcement, insurance underwriting, and employment background checks.

⁴ The Gramm-Leach-Bliley Act governs how financial institutions handle personal identifying information and how the institutions disclose information to affiliates or contractors. It also prescribes safeguards to protect any shared information.

⁵ Section 1320d-2(c) of HIPAA governs how healthcare data is transmitted and protected.

to post security as a condition for obtaining a preliminary injunction or a temporary restraining order. An action for mandamus against a public body under the Act would have to be commenced in the court of appeals.⁶

If a public body or person were not complying with the Act, and a judge or a judge's immediate family member commenced a civil action against the public body or person for injunctive relief to compel compliance or to enjoin further noncompliance with the Act and succeeded in obtaining relief in the action, the judge or judge's immediate family member would have to recover court costs and actual attorney fees for the action.

The Act specifies that it would not be a defense to a violation of the Act that the personal identifying information disclosed was publicly available from another source.

The Act would have to be construed liberally to effectuate the legislative intent and the purpose of the Act as complete and independent authorization for the performance of each act and thing authorized in the Act, and all powers granted in the Act would have to be broadly interpreted to effectuate the intent and purpose of it and not as to limitation of powers.

⁶ Generally, a writ of mandamus is an order from a court to a lesser government official or other body ordering the official or body to fulfill its obligatory or statutory duties.

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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.