

Legislative Analysis



UNLAWFULLY ACCESSING MOTOR VEHICLE REPORT

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4770 (Substitute H-2)
Sponsor: Rep. Ellen Cogen Lipton

House Bill 4771 (Substitute H-2)
Sponsor: Rep. Joseph Graves

House Bill 4772 (Substitute H-1)
Sponsor: Rep. Kevin Cotter

Committee: Judiciary
Complete to 10-7-13

A SUMMARY OF HOUSE BILLS 4770-4772 AS REPORTED BY COMMITTEE 9-12-13

House Bill 4770 would restrict access to a motor vehicle accident report for a period of 30 days after the accident to certain listed individuals or organizations, make a violation a criminal offense, and define terms.

House Bill 4771 would make it a misdemeanor offense to contact an individual known to have sustained a personal injury with a direct solicitation to provide services within 30 days of the injury.

House Bill 4772 would place the felony penalty for unlawfully accessing a motor vehicle accident report within the sentencing guidelines.

House Bills 4770 and 4771 are tie-barred to each other and to House Bill 4772. House Bill 4772 is tie-barred only to House Bill 4770. A tie-bar means a bill cannot take effect unless the bill or bills to which it is tie-barred are also enacted into law. A more detailed explanation of the bills follows.

House Bill 4770 would add a new section to the Michigan Vehicle Code (257.503). Under the bill, for 30 days after the date a motor vehicle accident report is filed with a law enforcement agency, only the following persons or organizations could access the report:

- An individual, vehicle owner, or property owner involved in the accident, or a family member or legal representative of any of the above.
- Insurance companies and their employees or agents providing personal, vehicle, or property insurance to any of the above.
- The attorney general or other prosecutor.
- A radio or television station employee, employer, freelance journalist, or contract agent of a FCC-licensed station.
- A news publication employee, employer, freelance journalist, or contract agent.
- A local, state, or federal governmental agency otherwise authorized to access a report in furtherance of the agency's duties (i.e., the National Highway Traffic Safety Administration).

- An entity authorized by a law enforcement agency to manage reports on its behalf.

To access a report within the 30-day period, authorized persons or organizations would have to present proof of authorization and a statement acknowledging that from the time that access is granted to the report until the end of the 30-day period, the person or organization would be prohibited from using the report for any commercial solicitation of those listed in the report and prohibited from disclosing any information contained in the report to a third party for commercial solicitation of those listed in the report.

A motor vehicle accident report would not be subject to the Freedom of Information Act until the 30-day time period has expired.

Knowingly violating the above prohibition would be a misdemeanor punishable by a fine of not more than \$15,000 for a first offense. A second or subsequent offense would be a felony punishable by imprisonment for not more than two years and/or a fine of not more than \$30,000.

"Law enforcement agency" would mean the Department of State Police, a county sheriff's office, or the police department of a local unit of government. "Local unit of government" would mean a state university or college or a county, city, village, or township.

"News publication" would refer to a news publication of general circulation published at least once a week that includes stories of general interest to the public and used primarily for the dissemination of news. It could include both print and online news publications. It would not include a publication that has as its primary purpose the distributing advertising or one with the primary purpose of publishing names and other personal identifying information regarding parties to a motor vehicle accident.

House Bill 4771 would add a new section to the Michigan Penal Code (MCL 750.410b) to prohibit a person from intentionally contacting any individual that the person knows has sustained a personal injury as a direct result of a motor vehicle accident, or a family member, with a direct solicitation to provide a service until the expiration of 30 days after the motor vehicle accident.

A violation would be a misdemeanor punishable by a fine of not more than \$15,000 for a first offense and not more than \$30,000 for a second or subsequent offense. The court could order a person convicted of a violation to pay the costs of prosecution.

"Direct solicitation to provide a service" would mean a verbal or written solicitation or offer, including by electronic means, made to the injured person or a family member seeking to provide a service for a fee or other remuneration that is based upon the knowledge or belief that the individual has sustained a personal injury as a direct result of a motor vehicle accident and that is directed toward that individual or family member. (The term "service" is not defined in the bill.)

"Personal injury" would mean any physical or mental injury, including a wrongful death.

House Bill 4772 would amend the Code of Criminal Procedure (MCL 777.16x) to specify that unlawfully accessing a motor accident report second or subsequent offense would be a Class G felony against the public order with a two-year maximum term of imprisonment.

FISCAL IMPACT:

The bill would have an indeterminate fiscal impact on state and local law enforcement agencies. In general, the Michigan Department of State Police (MSP) and local law enforcement agencies provide copies of motor vehicle traffic accident reports¹ to outside entities either through an automated report purchasing system or through a Freedom of Information Act (FOIA) request.

It's not entirely clear, however, how this bill would interact with the processes currently in place to obtain copies of traffic accident reports. Also, given that the process to obtain a traffic crash report is automated in many places, that automated process would have to be modified to conform to the requirements of the bill, by making traffic crash reports unavailable within 30 days after the traffic crash to individuals not specifically listed in the bill, and by making the reports available only to the specific individuals listed in the bill if they provide the required corroborating information – "proof" – that they are eligible to obtain a copy of the traffic crash report.

The bill would create new felony and misdemeanor penalties. The average cost of prison incarceration in a state facility is roughly \$35,500 per prisoner per year, a figure that includes various fixed administrative and operational costs. The cost of local incarceration in a county jail and local misdemeanor probation supervision varies by jurisdiction. State costs of parole and felony probation supervision average about \$3,000 per supervised offender per year. Any decrease in penal fine revenues would reduce funding for local libraries, which are the constitutionally-designated recipients of those revenues.

BACKGROUND INFORMATION:

The MSP Traffic Crash Purchasing System (TCPS) allows individuals to obtain copies of traffic crash reports for a \$10 fee. To obtain a report, individuals querying the system must provide the driver's license number and date of birth of the driver listed in the traffic crash report, along with the date of the crash. Alternatively, individuals querying the system must provide the serial/case number of the crash and the date of the crash. See, <http://mdotjboss.state.mi.us/TCPS/login/welcome.jsp>.

The Oakland County Department of Information Technology's Court and Law Enforcement Management Information System (CLEMIS) also makes traffic crash

¹ See Michigan Department of State Police, *UD-10 Traffic Crash Report Manual*, May 2010, http://www.michigan.gov/documents/UD-10_Manual_2004_91577_7.pdf.

reports from several partnering law enforcement agencies within and outside of Oakland County available for purchase. See, <https://payments.clemis.org/extservices/Crash/CrashIntro.aspx>.

More than 250 local law enforcement agencies make (apparently unredacted) traffic crash reports available through the Kalamazoo-based Authorize Transaction, LLC, to private individuals, insurance companies, legal firms, and others. See, <https://www.authorizetransaction.com/docview/stateDepartmentList.aspx?abbr=MI>

In responding to FOIA requests for traffic crash reports, the MSP provides redacted versions. In *Midwestern Audit Services, Inc. v. Department of State Police* (Docket No. 218066, unpublished), the Court of Appeals held that unredacted copies of the UD-10 traffic crash report were exempt from disclosure under FOIA on privacy grounds provided in MCL 15.243.

The court stated, "[t]he core purpose of the FOIA is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct. Therefore, fulfilling a request for information about private citizens—a request entirely unrelated to any inquiry regarding the inner workings of government, or how well the Department of State Police is fulfilling its statutory functions—would be an unwarranted invasion of the privacy of those citizens....Here, the disclosures sought relate only to the private lives of private citizens who happen to have been involved in a motor vehicle accident. The information sought is relatively extensive and includes intimate details of individuals' private lives."

The court continued, "Plaintiff would urge this Court to view the UD-10 forms as involving public information about public and newsworthy events because they involve accidents on public highways and would have this Court ignore the fact that the information sought pertains to the private lives of private individuals. However, names and addresses have been protected when they belonged to private citizens who were, as here, merely complying with their statutory duties...More importantly, we see no manner in which disclosure of the information sought is relevant to serve the core purpose of the FOIA, which is contributing significantly to public understanding of the operations or activities of the government. This is the only interest that must be balanced against protection of privacy afforded by the exemption. Because the disclosure does not serve the core purpose of the FOIA, it cannot outweigh the privacy interests protected by the exemption contained in MCL 15.243(1)(a)"

In *Larry S. Baker, P.C. v. City of Westland*, 245 Mich App 90 (2001), the Court of Appeals upheld the denial on privacy grounds of the disclosure of the names, addresses, injury codes, and accident dates of all injured, potentially injured, or deceased accident victims during a specified period and who were not at fault for the accident.

POSITIONS:

A representative of the Negligence Law Section, State Bar of Michigan, testified in support of the bills. (6-13-13)

A representative of the Michigan Association for Justice (the association of trial lawyers) testified in support of the bills. (6-13-13)

The Michigan Defense Trial Counsel, Inc. (MDTC) submitted written testimony in support of the bills. (6-12-13)

State Farm Insurance indicated support for House Bills 4770-4771. (9-20-13)

The Department of State Police indicated support for House Bill 4770. (9-12-13)

The Michigan Press Association indicated a neutral position on House Bill 4770. (9-12-13)

A representative of the Law Offices of Matz & Pietsch testified in opposition to the bills. (6-13-13 and 9-12-13)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Mark Wolf

■ 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.