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DRIVER PRIVACY PROTECTION

House Bill 4700 (Substitute S-1)
Sponsor: Rep. Terry London

House Bill 4701 (Substitute S-1)
Sponsor: Rep. Liz Brater

House Committee: Transportation
Senate Committee: Transportation and Tourism

Senate Bill 319 (Substitute S-1)
Sponsor: Sen. Michael O'Brien

Senate Bill 534 (Substitute S-1 with House committee amendments)
Sponsor: Sen. Michael Bouchard

House Committee: Consumer Protection
Senate Committee: Transportation and Tourism

Second Analysis (7-8-97)

THE APPARENT PROBLEM:

In response to the highly publicized murder of television star Rebecca Shaefer, the federal Driver Privacy Protection Act of 1994 was enacted. The federal act requires states to enact legislation to restrict the use of personal information, such as addresses, from motor vehicle registration files. (Ms. Shaefer was stalked and murdered by a person who had hired a private investigator to find her home, which the investigator accomplished by purchasing a copy of her driving record from the California Department of Motor Vehicles.) The federal legislation allows driver records to be disclosed for certain specific purposes, but prohibits states from selling "bulk" lists of names and addresses unless citizens are allowed to notify the drivers' license agency that they do not want their personal information included on the lists. If such legislation is not enacted by September 13, 1997, Michigan will be subject to a federal civil fine of up to \$5,000 per day for every day the program is not in place.

According to the Department of State, Michigan vehicle records have been available to the public since the turn of

House Bills 4700 and 4701, Senate Bills 319 and 534 (7-8-97)

the century. Driver records are available through a commercial look-up service, for a fee of \$6.55 per look-up. This service is authorized in appropriations boilerplate and is used by auto insurance companies to evaluate the driving records of prospective insurance customers, and by certain others with a valid need for driver license information. The Department of State collected over \$25 million last year from these driver record sales, which financed about one-sixth of the department's operating costs. In addition to these driver record sales, the department sells data in "bulk", or as name and address lists. This information is generally purchased by direct mail marketers who use it for soliciting business, or to data processing firms who resell it to secondary purchasers. Bulk sales generate about \$1 million in revenue annually.

Legislation has been introduced to bring the state into compliance with the federal law, while providing authorization for the Department of State to continue to sell information under certain circumstances.

THE CONTENT OF THE BILLS:

House Bill 4700 would amend Public Act 222 of 1972 (MCL 28.291 et al.), which provides for the issuance of an official state personal identification card, House Bill 4701 and Senate Bill 319 would amend the Michigan Vehicle Code (MCL 257.40b et al.) with respect to drivers' licenses and vehicle registration information, and Senate Bill 534 would amend the Natural Resources and Environmental Protection Act (MCL 324.80104 et al.) with respect to watercraft, snowmobile, and off-road vehicle registration information. The bills would allow the Department of State to release personal information in departmental files only for identified permissible purposes (consistent with federal law), and they would allow citizens to "opt out" of having their names and addresses included on "bulk" lists that are sold by the department for use in surveys, direct mail marketing efforts, and so forth.

Personal information. The bills would define "personal information" as information that would identify an individual, including a photograph or image, name, address (but not the zip code), driver license number, Social Security number, telephone number, digitized signature, and medical and disability information. Personal information would not include information on driving and equipment-related violations or civil infractions, driver or vehicle registration status, accidents, or other "behaviorally-related" information.

Permissible uses of personal information. Personal information from records of the secretary of state could not be disclosed unless the person requesting the information furnished satisfactory proof of identity and

certified that the information requested would be used for a permissible purpose, as listed in the bills. (And, it should be noted, "highly restricted personal information", defined as an individual's photograph or image, Social Security number, digitized signature, and medical and disability information, could not be used except by the secretary of state or for law enforcement purposes.) The permissible uses of identifying information (other than "highly restricted" information) would be:

- For use by a federal, state, or local governmental agency, including courts and law enforcement agencies, in carrying out the agency's functions, or by a private person or entity acting on the agency's behalf.

For use in connection with matters of motor vehicle, off-road vehicle (ORV), snowmobile, watercraft, and driver safety; watercraft, snowmobile, ORV, or auto theft, emissions, product alterations or recalls; vehicle, ORV, snowmobile, or watercraft performance monitoring or market research activities; and the removal of nonowner

records from the original records of vehicle, ORV, snowmobile, and watercraft manufacturers.

- For use in the normal course of business by a legitimate business, including its agents and employees, but only to verify the accuracy of personal information submitted by an individual to the business, and to obtain correct information if the submitted information was incorrect, for the sole purpose of preventing fraud by pursuing legal remedies or recovering a debt from an individual.
- For use in connection with a civil, criminal, administrative, or arbitration proceeding in a court, governmental agency, or regulatory agency.
- 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 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 investigation, antifraud activity, rating, or underwriting.
- For use in providing notice to the owner of an abandoned, towed, or impounded vehicle, ORV, snowmobile, or watercraft.
- For use by a licensed private detective, private investigator, private security guard agency, or alarm system contractor, but only for a purpose permitted under the bill.
- For use by an employer to obtain or verify information relating to a commercial driver's license or a chauffeur's license.
- For use by a car, ORV, or watercraft rental business for the purpose of making rental decisions.
- For use in connection with the operation of private toll transportation facilities.
- For use by a newspaper, magazine or periodical, news service, broadcaster, and so forth in the preparation of a report related to the operation of vehicles or public safety.

For any use by an individual requesting information pertaining to himself or herself or requesting in writing that the information be released to a designee. A request for disclosure to a designee, however, could only be

submitted by the individual to which the information pertained.

The bills specify that a person receiving information under the above-listed provisions could resell or redisclose the information only for a use permitted in the bills. Further, a person who resold or redisclosed such information would be required to retain records for at least five years identifying each person who received the information and the purpose for which it was obtained, and to allow departmental personnel to inspect and copy such records.

Commercial "look-up" service. The bills would add language to the vehicle code, the NREPA, and the statute governing the official state personal ID card to allow the Department of State to provide a commercial look-up service to provide individual records for the specific purposes listed above. (This service currently is offered through the authority of the department's annual appropriations act.) The bill specifies that for each record looked up, the secretary of state would charge a fee specified annually by the legislature, or if the legislature did not specify a fee, a market-based price established by the department. A commercial look-up request would have to be on a form prescribed by the department. Further, the bill specifies that the department could not provide an entire computerized central file to a nongovernmental person or entity, unless that entity paid the prescribed fee for each individual record.

Sale of bulk lists, "opt-out". The bills would authorize the secretary of state to contract for the sale of lists of driver, motor vehicle, snowmobile, watercraft, ORV, and personal ID records in bulk. While current law provides for the proceeds from such sales to be credited to the "state highway fund", the bill would direct this revenue to the secretary of state's commercial look-up account. Each purchaser of bulk information would be required to execute a written purchase contract. The secretary of state would establish a market-based price for the sale of lists of bulk information. The bulk lists could include personal information.

Before selling or furnishing a list of information under these provisions, the secretary of state would be required to implement procedures to allow individuals a "conspicuous opportunity" to be informed of their right to opt out of such lists. Under the bills, a person could tell the department not to disclose his or her personal information for purposes of surveys, marketing, and solicitations. The opportunity to "opt out" would be publicized through an ongoing public information campaign that would include the use of printed signs in branch offices, notices included with application and renewal forms, and periodic press

releases, public service announcements, advertisements, and the like. People

would also be able to notify the secretary of state of their desire to opt out of such lists through telephonic, automated, or other systems. Further, the secretary of state would be required to ensure that personal information disclosed in bulk was used only for uses permitted under the act, and that solicitations, etc. will not be directed at people who have notified the secretary of state of their desire to opt out. The secretary of state could include in a purchase contract any necessary safeguard (including a bond requirement) to ensure the purpose of the act was carried out.

The secretary of state could not disclose a list based on driving behavior, watercraft, ORV, or snowmobile operation, or sanctions to a nongovernmental agency, including an individual.

Release of information to governmental agencies. The bills would require the secretary of state to disclose personal information in departmental records if required to carry out the purpose of federal law or regulations.

In addition, the secretary of state could, upon request, furnish a list of information from the records of the department to a federal, state, or local governmental agency for use in carrying out the agency's functions. The secretary of state could charge a fee to cover the cost of preparing such a list, if the cost exceeds \$25. Further, the secretary of state could require the requesting agency to furnish one or more blank computer tapes, cartridges, etc., and could require the agency to execute a memorandum of agreement as a condition of obtaining such information.

Penalties. A person who obtained personal information under false pretenses, or who used personal information for a purpose other than those specified in the bills, would be guilty of a felony. A second violation would be a felony punishable by imprisonment for 2 to 7 years, a fine of \$1,500 to \$7,000, or both. A third or subsequent violation would be a felony punishable by imprisonment for 5 to 15 years, a fine of \$5,000 to \$15,000, or both.

Tie-bar, effective date. All of the bills are tie-barred to each other and would take effect July 1, 1997.

HOUSE COMMITTEE ACTION:

The current package of bills contains essentially all of the language that was originally included in House Bills 4700-4702. Those bills were passed by the House on May 29, 1997. The Senate then changed the makeup of the package without significantly changing the content. House Bill 4702 was replaced by Senate Bill 534, and the language of House Bill 4701 was split into two bills, House Bill 4701 and Senate Bill 319. Amendments were

made to keep the Senate bills essentially identical to the House-passed bills they replaced.

well as automotive research, statistics, and direct marketing, and

FISCAL IMPLICATIONS:

According to the Department of State, if the bills are not enacted, the state will be prevented by federal law from selling bulk data to direct mail marketers and data processing firms, which would reduce state revenues by just under \$1 million per year. Further, the bills contain language authorizing the department to charge a per-record fee for the commercial look-up service. Currently, the department charges \$6.55 per record, which is authorized in the general government appropriations act. Due to a recent court of appeals decision, it is apparently necessary to have this authorization in the vehicle code and the other authorizing statutes, or the department will not be able to charge this fee. Without the fees, departmental revenue would be reduced by about \$27 million annually. Finally, if the bills are not enacted by the federal deadline of September 13, 1997, Michigan will face a federal civil fine of \$5,000 per day for every day this program is not in place. (7-8-97)

ARGUMENTS:

For:

The bills will bring Michigan into compliance with federal law, and provide Michigan citizens with the opportunity to protect their privacy by preventing the release of information that would identify them by name, address, and so forth, through the sale of driver license records. The package would also make complementary amendments to the statutes governing information maintained by the Department of State with regard to the official state personal ID card, and titling and registration of watercraft, ORVs, and snowmobiles. The restriction on the release of personal information could be especially important to people concerned with harassment by former spouses and others, possibly preventing future tragedies such as the stalking and murder that prompted the federal legislation. The legislation would also generally allow people to avoid telephone solicitations and similar kinds of intrusions. At the same time, it would protect the legitimate use of driver records for certain business uses, such as insurance companies and others with a valid need to use the information. The Department of State could still provide a commercial look-up service to those that need such information, and also would still have a limited ability to sell lists of names and addresses to direct mail businesses, after giving citizens the ability to take their names off such lists. Data information companies such as the Polk Company provide a needed service by providing information needed for automobile recalls, as

the bills would allow for such companies to continue to purchase the data they need. Most other states have, or are in the process of, passing similar legislation to comply with the federal law.

Against:

The bills contain a provision that would prohibit the secretary of state from providing an entire computerized central file to a nongovernmental entity, unless the entity paid the prescribed fee (\$6.55) for each individual record. This provision is aimed at overturning a recent decision by the court of appeals, *Detroit Free Press v Michigan Department of State*. Apparently, driver license records have been made available to the press routinely through the commercial look-up service, through which the department charges for each record. The case, however, involves a request for the entire computerized database of the department, which consisted of 7.6 million records at the time of the request, amounting to an exorbitant charge of nearly \$50 million. Clearly, the department's costs for providing the data base are much less, and accordingly the newspaper sought the information under the Freedom of Information Act. The recent case, decided in favor of the newspaper, shows that the press has a legitimate need to obtain this information at a reasonable cost; the bills should not be used to attempt to overturn this principle.

Response:

The Department of State intends to appeal the court of appeals decision and makes several points in defense of the per-record charge. First, what is the legitimate need of the media to obtain the entire database? How can the privacy of individuals' driving records be protected if the entire central file is released? What obligations does the press have to protect against just the sort of invasion of privacy the federal law is designed to prevent? Can the media sell the information after it obtains it for a nominal fee? Further, if the media can obtain the data under the provisions of the FOIA, why not insurance companies, and data firms? There are enormous costs to the taxpayers in building and maintaining the database, and it is legitimate to ask users to help pay that cost (beyond the mere cost of copying it to a computer tape). This case, if it stands, undermines the department's authority to operate the commercial look-up service, and will cost the state over \$25 million per year.

POSITIONS:

The Department of State supports the bills. (7-8-97)

Analyst: D. Martens/W. Flory

■ 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.