

Legislative Analysis



UNLAWFULLY ACCESSING MOTOR VEHICLE REPORT

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House Bill 4770 as enacted
Public Act 218 of 2013
Sponsor: Rep. Ellen Cogen Lipton

House Bill 4771 as enacted
Public Act 219 of 2013
Sponsor: Rep. Joseph Graves

House Committee: Judiciary
Senate Committee: Judiciary
Complete to 7-9-19

A SUMMARY OF HOUSE BILLS 4770 AND 4771 AS ENACTED

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

House Bill 4771 makes 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.

The bills took effect January 1, 2014.

A more detailed explanation of the bills follows.

House Bill 4770 adds a new section to the Michigan Vehicle Code. Under the bill, for 30 days after the date a motor vehicle accident report is filed with a law enforcement agency, a person may only access the report if the person or organization files a statement indicating that from the time the person or organization is granted access to the report until 30 days after the date the report is filed, the person or organization acknowledges being prohibited from doing either of the following:

- Using the report for any direct solicitation of an individual, vehicle owner, or property owner listed in the report.
- Disclosing any personal information contained in the report to a third party for commercial solicitation of those listed in the report.

Knowingly violating the above prohibition is a misdemeanor punishable by a fine of not more than \$30,000 for a first offense. A second or subsequent offense is a misdemeanor punishable by imprisonment for not more than one year and/or a fine of not more than \$60,000.

“Direct solicitation” means *direct solicitation to provide a service* as that term is defined in section 410b of the Michigan Penal Code (added by House Bill 4771).

“Law enforcement agency” means the Department of State Police, a county sheriff's office, or the police department of a local unit of government.

"Local unit of government" means a state university or college or a county, city, village, or township.

“Personal information” is defined as information identifying an individual and includes the individual’s name, address, driver’s license number, Social Security number, and telephone number.

MCL 257.503

House Bill 4771 adds a new section to the Michigan Penal Code 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 an immediate family member, with a direct solicitation to provide a service until the expiration of 30 days after the motor vehicle accident.

A violation is a misdemeanor punishable by a fine of not more than \$30,000 for a first offense. A second or subsequent offense is a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$60,000, or both. The court could order a person convicted of a violation to pay the costs of prosecution.

“Direct solicitation to provide a service” means 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.

“Immediate family member” means the individual’s spouse, parent, child, or sibling.

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

MCL 750.410b

FISCAL IMPACT:

House Bill 4770 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.

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.

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 statement acknowledging the conduct the bill prohibits.

House Bills 4770 and 4771 create new misdemeanor penalties. The average cost of local incarceration in a county jail and local misdemeanor probation supervision varies by jurisdiction. 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.²

The Oakland County Department of Information Technology's Court and Law Enforcement Management Information System (CLEMIS) also makes traffic crash reports from several partnering law enforcement agencies within and outside of Oakland County available for purchase.³

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.⁴

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."

² See <http://mdotjboss.state.mi.us/TCPS/login/welcome.jsp>

³ See <https://payments.clemis.org/extservices/Crash/CrashIntro.aspx>

⁴ See <https://www.authorizetransaction.com/docview/stateDepartmentList.aspx?abbr=MI>

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.

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■ 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.