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SFA



BILL ANALYSIS

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Senate Bill 319 (as enrolled)
Senate Bill 534 (as enrolled)
Sponsor: Senator Michael J. O'Brien (S.B. 319)
Senator Michael J. Bouchard (S.B. 534)
Senate Committee: Transportation and Tourism
House Committee: Consumer Protection

PUBLIC ACT 101 of 1997
PUBLIC ACT 102 of 1997

Date Completed: 9-11-97

RATIONALE

Congress passed the Violent Crime Control and Law Enforcement Act in 1994. Chapter 30 of the Act, known as the Driver Privacy Protection Act, is an antistalking measure that was enacted in response to the murder of actress Rebecca Shafer. (Ms. Shafer reportedly was stalked and subsequently murdered by a person who hired a private investigator to locate the actress's home. The investigator discovered the address in Ms. Shafer's driving record, which he purchased from the California Department of Motor Vehicles.) Chapter 30 requires states to restrict the use of personal information in vehicle records to specific permissible uses. The Federal law also prevents 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. In addition, states are subject to a Federal civil fine of up to \$5,000 per day for every day that a similar state program is not in place by September 13, 1997. According to the Michigan Department of State, this State's vehicle records have been available to the public since the turn of the century. Some people believe, however, that the State should comply with the Federal law, while the Department of State is permitted to continue selling information under certain circumstances.

furnish information from the Department's records to a Federal, State, or local governmental agency to carry out its functions.

- Allowing the Secretary of State to sell lists in bulk for permitted purposes and for surveys, marketing, and solicitations, under certain circumstances.
- Requiring the Secretary of State to implement procedures to inform persons of their right to prohibit disclosure of personal information for surveys, marketing, and solicitations.
- Permitting the Secretary of State to include a safeguard, including a bond requirement, in an agreement or purchase contract to ensure that information provided or sold is used as permitted.
- Permitting the resale or redisclosure of personal information contained in a record maintained under the Code, under certain circumstances.
- Prohibiting the Secretary of State from disclosing a list based on driving behavior or sanctions to a nongovernmental agency.
- Specifying that a person is guilty of a felony for using personal information for a purpose other than what is permitted under the Code.

CONTENT

Senate Bill 319 amended the Michigan Vehicle Code to regulate the sale and disclosure of motor vehicle records by doing the following:

- Permitting the Secretary of State to

Senate Bill 534 amended provisions of the Natural Resources and Environmental Protection Act (NREPA) on historical boating records, application for watercraft and off-road recreation vehicle (ORV) titles, and snowmobile registration, to regulate the release of this

information by doing the following:

- **Permitting the Secretary of State to provide a commercial look-up service of records maintained under the Act, and to charge a fee for each record looked up.**
- **Prohibiting the disclosure of records to a nongovernmental person or entity unless the purchaser pays a prescribed fee, furnishes proof of identity, and certifies that the information will be used for purposes permitted under the bill.**
- **Requiring the Secretary of State to disclose personal information contained in a record to carry out the purposes of a specified Federal law.**
- **Permitting the Secretary of State to disclose, under certain circumstances, personal information to various Federal, State, or local governmental agencies and specific private persons or entities.**
- **Permitting the Secretary of State to furnish a list of information from the records maintained under the Act to a Federal, State, or local governmental agency, and to charge a preparation fee if costs exceed \$25.**
- **Allowing the Secretary of State to contract for the bulk sale of the lists of records maintained under the Act for permitted purposes as well as for surveys, marketing, and solicitations.**
- **Requiring the Secretary of State, before selling or furnishing lists of information for surveys, marketing, and solicitations, to inform persons of their right to prohibit the disclosure of personal information.**
- **Allowing an authorized recipient of personal information to resell or redisclose it for a permitted use, under certain circumstances.**
- **Establishing felony penalties for making a false representation to obtain personal information or using the information for nonpermitted purposes.**

Senate Bill 534 specifies an effective date of July 1, 1997.

The bills are tie-barred to each other and to House Bill 4700 (Public Act 99 of 1997) and House Bill 4701 (Public Act 100 of 1997). House Bill 4700 amended Public Act 222 of 1972, which provides for personal identification cards and requires the Secretary of State to establish a central file of information contained on applications for them, to regulate the release of this information from the

file. House Bill 4701 amended the Michigan Vehicle Code to regulate the release of personal information contained in records maintained under the Code.

A detailed description of the Senate bills follows.

Senate Bill 319

Computerized File

Previously, under the Code, the Secretary of State was required to file all applications for registration of motor vehicles in the office and keep a complete and accurate record of the facts appearing on the applications together with a numerical list of the license numbers assigned to each vehicle. Under the bill, the Secretary of State is required to create and maintain a computerized central file of all applications for registration of motor vehicles, but need not retain any other record of the application. The computerized central file must be interfaced with the Law Enforcement Information Network (LEIN) as provided in the LEIN Policy Council Act.

The Code previously required the records to be open to inspection as prescribed by the Secretary of State in rules and regulations. The bill instead provides that the records must be made available to the public through the Secretary of State's commercial look-up service. The bill also retained a requirement that the records be preserved for three years after the date of registration.

Sale of Registration Lists

The bill deleted provisions that required the Secretary of State to furnish county sheriffs and chiefs of police in cities with populations of at least 10,000 a list of motor vehicle registrations and related information, and that authorized the Secretary of State to sell surplus lists at a reasonable price.

Under the bill, the Secretary of State, upon request, may furnish a list of information from the Department's records maintained under the Code to a Federal, State, or local governmental agency for use in carrying out the agency's functions, or to a private person or entity acting on behalf of a governmental agency for use in carrying out its functions. The Secretary of State may charge the requesting agency a preparation fee to cover the cost of preparing and furnishing a list, if the preparation cost exceeds \$25, and use the revenues received from the service to defray necessary expenses. The Secretary of State may

require the requesting agency to furnish one or more blank computer tapes, cartridges, or other electronic media and may require the agency to execute a written memorandum of agreement as a condition of obtaining a list of information under this provision.

The Code previously authorized the Secretary of State to sell or contract for the sale of any motor vehicle registration lists and to sell or furnish any other information from the Department's records pertaining to the sale, ownership, and operation of motor vehicles. The Code also required the Secretary of State to fix a reasonable price for the sale of these lists, and required the proceeds from each sale to be credited to the State Highway Fund. The bill, instead, 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 for purposes described in the Code (under provisions in House Bill 4701 concerning the disclosure of personal information), as well as for surveys, marketing, and solicitations. The Secretary of State must require each purchaser of bulk records to execute a written purchase contract. The Secretary of State also must fix a market-based price for the lists or other records maintained in bulk, and the proceeds from each sale must be credited to the Secretary of State's commercial look-up account.

(House Bill 4701 specifies the purposes for which the Secretary of State may disclose personal information. These are generally the same as the purposes listed in Senate Bill 534 concerning the release of personal information contained in watercraft, ORV, and snowmobile records (described below). Under House Bill 4701, personal information also may be released for use by an employer to obtain information about the holder of a commercial driver's license or a chauffeur's license; and for use in connection with the operation of private toll transportation facilities.)

Disclosure Requirements

Under the bill, before selling and furnishing any list of information for surveys, marketing, and solicitations, the Secretary of State must implement methods and procedures that furnish individuals with a conspicuous opportunity to be informed of their right to prohibit the disclosure of personal information about them for purposes of 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 application 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. Each printed sign must be at least 8-1/2 inches wide by 11 inches high and contain a caption in at least 46-point type. If the Secretary of State furnishes notice on forms, the information printed on them must be similar to the information printed on branch office signs. The Secretary of State must review annually the information campaign to update notice content and furnish notice by more effective means.

The required methods and procedures also must provide individuals with an 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 purposes of surveys, marketing, and solicitations. The Secretary of State may contract with another public or private person or agency to implement this provision. In addition, the methods and procedures must 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 are not directed at those individuals who in a timely fashion have notified the Secretary of State that surveys, marketing, and solicitations should not be directed at them.

The Secretary of State may insert any safeguard that he or she considers reasonable or necessary, including a bond requirement, in a memorandum of agreement or purchase contract to ensure that the information provided or sold is used only for a permissible use and that the rights of individuals and of the Department are protected.

Resale or Redisclosure

An authorized recipient of personal information disclosed under the Code may resell or redisclose the information only for a use permitted under the Code (as described in House Bill 4701). An authorized recipient of personal information who resells or rediscloses the information for a permitted use, or for survey, marketing, and solicitations, must do both of the following:

- Make and keep for at least five years records identifying each person who received personal information from the authorized recipient and the permitted use for which it was obtained.

- Allow a representative of the Secretary of State, upon request, to inspect and copy records identifying each person who received personal information from the authorized recipient and the permitted use for which it was obtained.

Senate Bill 534

Access to Records

The bill provides that records maintained under Part 801 (Marine Safety), Part 803 (Watercraft Transfer and Certificate of Title), Part 811 (Off-Road Recreational Vehicles), and Part 821 (Snowmobiles) of the NREPA, other than those that are declared to be confidential by law or that are restricted by law from disclosure to the public, must be made available to the public pursuant to procedures prescribed in Parts 801, 803, 811, and 821 as well as in the Freedom of Information Act. The bill deleted the following requirements: that the Secretary of State annually compile all registration numbers and names of persons assigned those numbers under Part 801; that the list be furnished to all police agencies upon request and to individuals upon payment of a fee; and that the Secretary of State furnish information on a title under Part 803 without charge to authorized law enforcement and conservation officers.

Under the Act, the Secretary of State may provide a commercial look-up service of watercraft title records, as well as ORV operation, title and registration records. The bill adds that this service may be provided for watercraft and snowmobile registrations. For each record looked up, the Secretary of State must charge a fee specified annually by the Legislature, or if none, a market-based price established by the Secretary of State. A commercial look-up request must be processed only if it is in a form or format prescribed by the Secretary of State. The fee revenues received from the service may be used for necessary expenses.

Under the Act, in order to provide an individual, historical boating or snowmobile record, the Secretary of State must create and maintain a central file that includes the name of a person who is convicted of an offense, who fails to comply with an order or judgment, or against whom an order is issued under Part 801 or 821. Under the bill, the Secretary of State also must maintain a computerized central file for watercraft and ORV records, and all of the files must include information contained on application forms. The

computerized files must be interfaced with the Law Enforcement Information Network as provided in the LEIN Policy Council Act.

The bill prohibits the Secretary of State from providing an entire computerized central or other file of records maintained under Part 801, 803, 811, or 821 to a nongovernmental person or entity unless the purchaser pays the prescribed fee or price for each individual record contained within the computerized file.

The bill also specifies under Parts 803 and 811 that a certified copy of an order, record, or paper maintained under Part 803 or 811 is admissible in evidence in the same manner as the original and is prima facie proof of the facts stated in the original. (The NREPA already contained this language in Parts 801 and 821.)

Limitations on Dissemination/Permitted Uses

The bill specifies that the examination, inspection, or sale of personal information by the Secretary of State or any officer, employee, agent, or contractor of the Secretary of State maintained under Part 801 is limited as provided in the bill. Furthermore, personal information in a record maintained under Part 803, 811, or 821, except as otherwise provided, may not be disclosed unless the person requesting the information furnishes proof of identity considered satisfactory to the Secretary of State and certifies that the personal information requested will be used for a permissible purpose. Notwithstanding this provision, highly restricted personal information will be used and disclosed only as expressly permitted by law. ("Personal information" means information that identifies an individual, including his or her driver identification number, name, address not including zip code, and telephone number, but not information on watercraft, ORV, or snowmobile operation and equipment-related violations or civil infractions, operator or vehicle registration status, accidents, or other behaviorally related information. "Highly restricted personal information" means an individual's photograph or image, Social Security number, digitized signature, and medical and disability information.)

Personal information in a record maintained under Part 801, 803, 811, or 821 must be disclosed by the Secretary of State, if required to carry out the purposes of a specified Federal law. ("Specified federal law" means the Automobile Information Disclosure Act, the former Motor Vehicle Information and Cost Savings Act, the former

National Traffic and Motor Vehicle Safety Act of 1966, the Anti-Car Theft Act, the Clean Air Act, and all Federal regulations promulgated to implement these Federal laws.)

Personal information in a record maintained under Part 801, 803, 811, or 821 may be disclosed to any person by the Secretary of State to be used as follows:

- By any 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 government agency in carrying out its functions.
- In connection with matters of watercraft, snowmobile, or ORV safety; operator safety; watercraft, snowmobile, or ORV theft; watercraft, snowmobile, or ORV emissions; watercraft, snowmobile, or ORV product alterations, recalls, or advisories; performance monitoring of watercraft, snowmobiles, or ORVs; watercraft, snowmobile, or ORV research activities including survey research; and, the removal of nonowner records from the original records of watercraft, snowmobile, or ORV manufacturers.
- In the normal course of business by a business or its agents, employees, or contractors to verify the accuracy of personal information submitted by an individual to the business or its agents, employees, or contractors, and if the information as submitted is not correct or is no longer correct, to obtain the correct information, but only for preventing fraud, by pursuing legal remedies against, or recovering on a debt or security interest against, the individual.
- In connection with any civil, criminal, administrative, or arbitral proceeding in any court or government agency before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of any court, administrative agency, or self-regulatory body.
- In legitimate research activities and in preparing statistical reports for commercial, scholarly, or academic purposes by a bona fide research organization, so long as the personal information is not published, redisclosed, or used to contact individuals.
- By any insurer, self-insurer, or insurance support organization, or its agents, employees, or contractors, in connection

with claims investigation activities, antifraud activities, rating, or underwriting.

- In providing notice to the owner of an abandoned, towed, or impounded watercraft, snowmobile, or ORV.
- By any licensed private security guard agency or alarm system contractor licensed under the Private Security Guard Act of 1968, or a private detective or private investigator licensed under the Private Detective License Act of 1965, for any purpose permitted under this provision.
- By a news medium in the preparation and dissemination of a report related in part or in whole to the operation of a motor vehicle or public safety. ("News medium" includes a newspaper, a magazine or periodical published at regular intervals, a news service, a broadcast network, a television station, a radio station, a cablecaster, or an entity employed by any of the above.)
- By an individual requesting information pertaining to himself or herself or requesting in writing that the Secretary of State provide information pertaining to himself or herself to the individual's designee. A request for disclosure to a designee, however, may be submitted only by the individual.
- By a watercraft or ORV rental business or its employees, agents, contractors, or service firms for making rental decisions.

Disclosure Requirements/Bulk Sales

Upon request, the Secretary of State may furnish a list of information from the Department's records maintained under Part 801, 803, 811 or 821 to a Federal, State, or local governmental agency for use in carrying out the agency's functions, or to a private person or entity acting on behalf of a governmental agency for use in carrying out its functions. Unless otherwise prohibited by law, the Secretary of State may charge the requesting agency a preparation fee to cover the cost of preparing and furnishing a list provided under this provision if the preparation cost exceeds \$25, and may use the revenues received from the service to defray necessary expenses. The Secretary of State may require the requesting agency to furnish one or more blank computer tapes, cartridges, or other electronic media, and may require the agency to execute a written memorandum of agreement as a condition of obtaining a list of information under this provision.

The Secretary of State may contract for the sale of lists of records maintained under Parts 801, 803,

811 and 821 in bulk, in addition to those lists distributed at cost or at no cost under these provisions, for purposes defined in the bill (described above) as well as for surveys, marketing, and solicitations. The Secretary of State must require each purchaser of bulk information to execute a written purchase contract. The Secretary of State must fix a market-based price for the sale of lists of bulk information, which may include personal information. The proceeds from each sale must be used by the Secretary of State to defray the costs of list preparation and for other necessary or related expenses.

Before selling and furnishing in bulk any list of information for surveys, marketing, and solicitations, the Secretary of State must implement methods and procedures in regard to giving people notice of their right to prohibit the disclosure of personal information, and ensuring that bulk information will be used only for permitted purposes. (These provisions are the same as those contained in Senate Bill 319 for motor vehicle records.)

The Secretary of State may insert any safeguard that he or she considers reasonable or necessary, including a bond requirement, in a memorandum of agreement or purchase contract executed under the bill, to ensure that the information furnished or sold is used only for a permissible use and that the rights of individuals and of the Secretary of State are protected. An authorized recipient of personal information who resells or rediscloses the information for surveys, marketing, and solicitations must do both of the following:

- Make and keep for at least five years records identifying each person who received personal information from the authorized recipient and the permitted purpose for which it was obtained.
- Allow a representative of the Secretary of State, upon request, to inspect and copy records identifying each person who received personal information from the authorized recipient and the permitted purpose for which it was obtained.

The Secretary of State may not disclose a list based on watercraft, ORV, or snowmobile operation or sanctions to a nongovernmental agency, including an individual. Under Part 821 only, the Secretary of State is required on a continuing basis to inform persons of their right to prohibit the disclosure of personal information pertaining to them for surveys, marketing, and

solicitations through the use of a telephone or other automated or efficient system, the use of inserts in individual mailings, and the placement of appropriate signs in branch offices.

Reselling Information

An authorized recipient of personal information disclosed under the bill may resell or redisclose the information for any use permitted under the bill (described above). An authorized recipient of an individual record or records under the bill's ORV disclosure provisions may resell or redisclose personal information for any purpose. An authorized recipient who resells or rediscloses personal information must be required by the Secretary of State to maintain for at least five years records as to the information obtained and the permitted use for which it was obtained, and to make these records available for inspection by the Secretary of State, upon request.

Penalties

A person is guilty of a felony for making a false representation or false certification to obtain personal information under the bill, or using personal information for a purpose other than a permissible purpose identified in the bill.

A person who is convicted of a second violation is guilty of a felony punishable by imprisonment for at least two years but not more than seven years, and/or a fine of at least \$1,500 but not more than \$7,000. A person who is convicted of a third or subsequent violation is guilty of a felony punishable by imprisonment for at least five years but not more than 15 years and/or a fine of at least \$5,000 but not more than \$15,000.

MCL 257.208d et al. (S.B. 319)
MCL 324.80104 et al. (S.B. 534)

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

The bills bring Michigan into compliance with Federal law and, as importantly, give Michigan citizens an opportunity to protect their privacy by permitting them to prevent the Department of State from releasing personal information found on drivers' licenses and various vehicle records maintained by the Secretary of State. Restrictions

on the release of personal information may benefit persons concerned about harassment, and may possibly prevent future tragedies, such as the stalking and subsequent murder that prompted the Federal law. At the same time, the bills continue the legitimate use of this information by governmental and nongovernmental agencies. Michigan vehicle records have been available to the public since the turn of the century. According to the Department of State, the State's 500 no-fault auto insurance companies use this service to evaluate the driving habits of persons who currently are or in the future may be insured. The Department of State sells for a fee driver history abstracts through a commercial look-up service. The Department collected more than \$25 million last year, an amount that financed approximately one-sixth of the Department's entire operation.

In addition, data are sold in bulk to retailers who use this information to solicit business. Bulk list sales generate for the Department approximately \$1 million in revenue annually. According to the Department, the Federal law prevents a state from selling data in bulk (as lists) to third parties unless its citizens are given a conspicuous opportunity to opt out; that is, to notify the state that they do not want their personal information sold for use during surveys, marketing efforts, or solicitations. Thus, the bills allow citizens to take their name off of these lists, yet allow the Department to continue providing certain information for research or marketing purposes.

Legislative Analyst: L. Arasim

FISCAL IMPACT

The bills will result in additional costs to the Department of State. The actual cost of allowing individuals to opt out of lists will depend on the number of people who choose that option.

Fiscal Analyst: B. Bowerman

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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.