

- SUBJECT:** Authorizing creation of driver record monitoring pilot program
- COMMITTEE:** Transportation — committee substitute recommended
- VOTE:** 8 ayes — Krusee, Phillips, Deshotel, Haggerty, Harless, Hill, Macias, Murphy
- 0 nays
- 1 absent — Harper-Brown
- WITNESSES:** For — Jeff Peterson, Explore Information Services.
- Against — None
- On — Ron Coleman, Department of Public Safety; Kevin Cooper, ChoicePoint.
- BACKGROUND:** Transportation Code, ch. 730 — the Motor Vehicle Records Disclosure Act — specifies the type of information contained in motor vehicle records that can be released and who is eligible to obtain that information. Records can be disclosed in connection with vehicle use or safety, theft, emissions, recalls, child support enforcement, or adherence to certain federal laws. A person can obtain personal information from a motor vehicle record if the person provides proof mandated by the agency, including the consent of the subject of the request, and guarantees that use of the information will be limited for or on behalf of a government entity or for other specified business functions.
- Transportation Code, sec. 521.046 allows an entity eligible to obtain motor vehicle records under ch. 730 to submit a \$6 fee, a driver's license number, full name, and date of birth to the Department of Public Safety (DPS), which is authorized to release:
- the driver's current license status;
 - information regarding each moving violation that resulted in the driver's conviction during the three years preceding the request; and

- information regarding each traffic accident for which the driver received a citation during the three years preceding the request.

Transportation Code, sec. 521.055 allows DPS to establish a separate computer system to allow interactive access to certain driver's license record information. It sets fees for release of driving records and allows the agency to contract with private vendors and set rules to implement the computer system.

DIGEST:

CSHB 1439 would authorize DPS to create a one-year driver monitoring pilot program, allowing the agency to enter into a contract with certain entities with which it would share specific information from its driver's license records. Upon completion of certain requirements and at the recommendation of the agency, the Public Safety Commission would be empowered to authorize DPS to implement a permanent program.

Those eligible to receive driver's license record information under the Motor Vehicle Records Disclosure Act would be allowed to participate in the program, provided the party also was:

- an insurance support organization or employer support organization;
- an employer or insurer; or
- an entity that self-insures motor vehicles.

Contract terms. DPS would be required, under a contract entered into through this program, to:

- monitor the driving record of each driver requested by the contractor;
- identify any changes in the status of the driver's license or any time the driver was convicted for a traffic offense; and
- periodically provide the contractor with reports of those changes.

Such a contract would require the contractor to:

- purchase, under Transportation Code 521.046, a copy of the driving record of any person identified as having an updated record;
- guarantee it would not disclose any information without the express written consent of DPS, except as required by law; and

- notify DPS immediately if disclosure was required by law or a legal process so the agency could act to block or restrict information disclosure.

An insurance support organization also would be bound under the contract not to seek information about anyone not insured by its client and provide the agency with the name of each client for which it was providing driver information.

DPS would set a reasonable fee for records obtained by the contractor to cover administrative costs. The agency, to the fullest extent possible, would be required to provide services under the contract through an interactive system authorized under Transportation Code, sec. 521.055.

Civil penalties. The Office of the Attorney General could file suit against a contractor in Travis County or any county in which a violation occurred. The attorney general could seek injunctive relief to prevent or restrain violation of contract terms governing illegal disclosure of information. If the contract was violated, the attorney general could seek a civil penalty of up to \$2,000 for each day the violation continued or occurred. The attorney general could recover reasonable expenses, court costs, investigative costs, and attorney fees from a contractor found liable under this section. A violation of the contract would be considered a false, misleading, or deceptive act or practice under Business and Commerce Code, ch. 17.

Criminal penalties. An employee of the contractor who violated information disclosure requirements under the contract could be charged with a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000). If the action was considered an offense under other statutes, the violator could be prosecuted under this section, another section, or both.

Permanent program. At the conclusion of the pilot program, before DPS could recommend making the program permanent, the agency would be required to submit a report analyzing the scope, effectiveness, and cost benefits to all members the Legislature, including the lieutenant governor, and the speaker of the House. The report would list each insurance support organization that contracted with DPS through the program and each client with which the organization shared information.

Effective date. The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

SUPPORTERS
SAY:

CSHB 1439 would authorize DPS to establish a driver record monitoring pilot program to enable insurance companies and employers of large vehicle fleets, among others, to obtain up-to-date information on their clients or employees. Such a system would create a way to more quickly identify dangerous drivers and allow companies to take action leading to safer driving conditions. This program would change little about the existing system regarding those eligible to obtain information, but it would create a more efficient and expedient process. Thirty-six states already use a program like this, and now that DPS is about to complete its computer system overhaul, Texas is ready and able to join those states.

Texas long has allowed access to driving records for purposes of employment verification, law enforcement, insurance coverage, legal cases, antifraud cases, and other public safety purposes. Insurance companies can use this information to check driving behaviors of new and existing customers. Companies employing drivers can do the same to avoid additional liabilities associated with unsafe motorists, and school districts can check drivers' records to ensure the safety of students who ride their buses. Additionally, DPS soon will have the technical capacity to undertake a program such as this after the expected completion of its system overhaul in the fall.

Today, an average insurance company purchases only about 20 percent of its clients' driving records each year because it is cost prohibitive to buy every record on an annual basis. Most motorists' driving histories, therefore, are reviewed only once every five years or so, limiting the ability of an insurance company to determine which of its insured drivers are high-risk and which ones never or rarely run afoul of the law. Because of this limitation, insurance companies must spread the cost of potential risks across the entire pool of insured motorists. The program proposed in CSHB 1349 would allow insurers to reward good driving behavior.

While insurers could not promise rate reductions, it is safe to say that good drivers' insurance rates would be stabilized while dangerous drivers would pay higher rates and bear the majority of costs incurred through contracting with a third-party vendor. Although insurance companies are allowed to ask drivers about their driving records upon renewal of their

contracts, there is no way to verify those claims short of actually obtaining the records.

The costs associated with this program are unknown because the rules that would influence program participation have not yet been created, but it is likely the state would gain, rather than lose, revenue under the program. CSHB 1439 would allow DPS to create rules to assess fees to ensure costs were covered. Because the third-party vendor would be required to purchase any record that had been updated, it is possible that more records would be purchased under the new program than they are today.

As a response to concerns about security of private information, the substitute would enhance penalties for those who illegally released information and would grant more power to the attorney general to file suit against these parties. The bill contains other safeguards, such as making the program temporary and requiring a report on its benefits, to ensure that Texas did not enter into a permanent contract without first protecting its citizens.

**OPPONENTS
SAY:**

CSHB 1439 would create a program that not only would have little benefit for drivers but actually could cause them harm. It would add yet another avenue for the release of motorists' personal information and driving records to the public and could create additional problems for those trying to secure their private data in an age of identity theft.

Giving another entity access to drivers' personal information and driving history would create another source from which hackers and identity thieves could obtain private data. One of the three companies that has indicated an interest and an ability to bid on this program recently has acknowledged security lapses that led to the release of private information to the public. Restoring a credit record and financial standing after identity theft is an arduous process that eats up time, money, and patience of those whose personal information had been stolen. This bill would not create any way for the state to monitor or oversee the third party.

Drivers are more likely to see an increase in rates than a decrease or stabilization of rates because this program would add another layer to the process – the third-party vendor – whose cost would be borne by all ratepayers. Insurance companies are prohibited from setting rates based on moving violations, although most still do through an exemption allowing county mutual companies to do this. Nonetheless, the correlation between

moving violations and the likelihood of a driver getting involved in an accident is tenuous. In most cases, insurance companies currently receive accident notifications, and this information is the most crucial and telling as to the risk an insurance company must absorb for a particular driver. By raising a driver's rates after a moving violation, an insurance company is doubly penalizing a driver who already has been required to pay a substantial fine associated with the citation.

Insurance companies already have several mechanisms through which they can monitor a driver's record. They can request a record periodically, as they do today. They also can ask drivers to report any recent moving violations or accidents upon renewal of their policies. Although some drivers withhold information about their involvement in traffic incidents, an insurance company has the right to drop such a driver if it discovered the driver had lied about his or her driving record.

OTHER
OPPONENTS
SAY:

If one of the goals of this bill is to allow insurance companies to more properly assess and charge its high-risk drivers, it should be amended to include provisions expressly allowing such a practice. Insurance Code, art. 5.01-1 prohibits an insurer from using a moving violation conviction in setting a driver's rates. County mutual companies are not subject to this restriction, and because they work with the top five insurer groups in the state, a large sector of the market uses drivers' records to establish rates. The law should be amended to create a more uniform practice and level the playing field among all insurers.

NOTES:

The committee substitute added to the original bill provisions that would prohibit a contractor from disclosing information under the contract. It also specified the legal recourse the state would have under a disclosure and the criminal and civil penalties a contractor could face for illegally disclosing information.

The companion bill, SB 876 by Seliger, was reported favorably, as substituted, by the Senate Transportation and Homeland Security Committee on April 20 and was recommended for the Senate Local and Uncontested Calendar. HB 2570 by Thompson, which would amend the Insurance Code to allow insurance companies to take moving violations into account when they set drivers' insurance rates, has been referred to the House Insurance Committee.