

SUBJECT: Keeping motor vehicle accident reports confidential for 30 days

COMMITTEE: Transportation — committee substitute recommended

VOTE: 9 ayes — Krusee, Phillips, Harper-Brown, Deshotel, Haggerty, Harless, Hill, Macias, Murphy

0 nays

WITNESSES: For — Gary G. Evans, Fred Lohmann, National Insurance Crime Bureau; Jonathan Sibley, Association of Fire & Casualty Companies of Texas; *(Registered, but did not testify: Jay Harvey, Texas Trial Lawyers Association; Lee Loftis, Independent Insurance Agents of Texas)*

Against — Adriene Anderson; Javier Guajardo; *(Registered, but did not testify: Pete Gongora; Ann A. Hammond; Angelo Pardo; Juan Rodriguez; Hollis Rutledge, Jr.; Ken Whalen, Texas Daily Newspaper Association and Texas Press Association)*

On — *(Registered, but did not testify: Dennis Pompa, Texas Department of Insurance)*

BACKGROUND: The federal Driver Privacy Protection Act (18 U.S.C.A. §2721) prohibits state departments of motor vehicles from knowingly disclosing or otherwise making available to any person or entity personal information about any individual obtained in connection with a motor vehicle record. Federal law lists exceptions to the requirement and permissible uses of the information and provides guidelines for the resale or redisclosure of the information.

In response to federal law, the 75th Legislature in 1997 enacted SB 1069 by Moncrief to restrict release of driver's license information and traffic accident reports. It required the Department of Public Safety (DPS) to provide driver's license or renewal applicants the opportunity to prohibit the agency from disclosing their personal information — an "opt-out" provision.

In 2000, a state district court ruled that parts of the state laws enacted by SB 1069 were unconstitutional, including a requirement that a person seeking traffic accident information provide the name of a person involved and the date or location of the accident and a restriction on dissemination of accident report information on the Internet.

In 2001, the 77th Legislature enacted HB 1544 by Uher, et al. that amended Transportation Code, sec. 550.065 to change the information considered to be related to motor vehicle accidents by eliminating information such as dispatch logs, towing information, 9-1-1 records, and other records and replacing it with accident reports and driver's license information. DPS or a governmental entity must release information related to accidents to a requestor who provided two facts about the accident.

DIGEST:

CSHB 2828 would amend Transportation Code, sec. 550.065 to prohibit the release of personal information of someone involved in a vehicle accident, including the person's name, home or employment address, and home or employment telephone number, for 30 days after the accident.

Unauthorized release of this confidential and privileged information by governmental employee would be considered official misconduct, which is a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000). Release of the information by a non-governmental employee to someone not authorized to receive the information would be a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000).

CSHB 2828 would provide exemptions for the release of the information within the first 30 days of the accident upon a request by:

- the person involved in the accident or the lienholder of a vehicle involved in the accident;
- a person designated by the person as an insurance agent or insurance claims processor;
- a government attorney preparing a criminal case related to the accident;
- law enforcement accident investigators;
- a court, in response to a subpoena in a case related to the accident;
- a radio or television station licensed by the Federal Communications Commission;

- a newspaper that was qualified to publish legal notices or was a free newspaper published at least once a week and disseminated to the general public;
- other local, state, and federal agencies authorized to have access to accident reports; and
- a licensed private investigator.

CSHB 2828 would further define a newspaper and would not extend the exemption to a newspaper that was intended primarily for members of a particular profession or occupational group or published only advertising or the name and personal information of persons involved in vehicle accidents. The bill would not prevent radio and television stations and newspapers from the dissemination or publication of news to the general public based on information from accident reports.

Accident reports also would be available during the 30 days after the accident to persons who:

- presented a valid drivers license or other identification and showed the person's qualification to receive the information; and
- offered a notarized statement that the information would not be used for a commercial solicitation of a person involved in an accident or released to someone else who would make a commercial solicitation.

The bill also would allow for governmental entities to make vehicle accident information, including personal information, available through a third party vendor.

The bill takes effect on September 1, 2007.

**SUPPORTERS
SAY:**

CSHB 2828 would help prevent wide-ranging insurance fraud schemes that cost Texans hundreds of millions of dollars annually. Insurance fraud rings exploit loopholes in current law to obtain personal information from vehicle accident reports. Typically, the search involves a two-step process where the conspirators file Open Record requests to obtain law enforcement logs and then use the information to provide the two factors, such as date and location of the accident, required by current law to release the full report. Information is provided to telemarketers who solicit those involved in accidents on behalf of "medical mills" or unscrupulous attorneys. The medical clinics prey typically on low-income or less

sophisticated Texans, and an accident involving no or minor injuries becomes a \$20,000 to \$30,000 claim. Eliminating fraud would save insurance premiums for all drivers in the state.

Criminal penalties would be needed to make fraud prevention efforts effective. Two recent cases in South Texas — one involving an emergency medical staffer releasing accident information and another where a paralegal was conspiring with a telemarketer — foundered because of the lack of effective criminal penalties. CSHB 2828 would help provide a deterrent to unauthorized release of confidential information by government employees or those authorized to have the information.

Current law restricts the ability of attorneys to solicit vehicle accident victims and has effectively ended the unsavory practice of "ambulance chasing." The same restrictions should apply to medical clinics and others who might take advantage of vulnerable accident victims.

CSHB 2828 would fit into the Legislature's efforts to restrict and penalize the unauthorized release of personal information. While accident reports do not record a person's social security number, the documents include information on a person's name, date of birth, address, and telephone number. Release of that information can pose a threat of additional crimes of identity theft in addition to insurance fraud.

CSHB 2828 would not prevent radio or television stations or newspapers from exercising their First Amendment right and duty to report the news based on information from accident reports. The bill would strike the right balance between protecting privacy of individuals and the public's and press's rights under the First Amendment. The U.S. Supreme Court has held in a case involving a California case that the government has the right to restrict completely access to accident information and can legitimately decide which parties could have an exception. Similarly, the U.S. Sixth Circuit of Appeals upheld a Kentucky law that distinguished among the various forms of news media. The appeals court reasoned that it would be possible, but very unlikely, for a radio or television station to report or newspaper to print lists of names, addresses, and telephone numbers of those involved in accidents. CSHB 2828 is narrowly tailored and would withstand judicial review under current court rulings.

The fiscal note prepared by the Legislative Budget Board indicates that no significant fiscal implications to the state are anticipated due to HB 124.

Concerns that this bill may aggravate prison overcrowding problems are exaggerated.

OPPONENTS
SAY:

CSHB 2828 would represent yet another futile attempt in the Legislature's decade's long attempt to close access to vehicle accident reports. As early as 1944, the Texas Supreme Court held that accident report information is a public record. The Legislature has been trying since the 1970s to control access to this information and has encountered legal obstacles every time. The current legislation repeats some of the flaws with its restrictions and waiting period that caused SB 1069 to be ruled unconstitutional.

The bill unfairly would jeopardize the operations of legitimate companies which collect accident reports from governmental agencies on behalf of insurance companies, attorneys, and others. As a practical matter, the 30-day restriction period would make little difference for those seeking information in a large county such as Harris County. The Open Records request requires 10 days, and the information is not released generally for another week or 10 days.

Defining what should be considered a "legitimate" media outlet already is inexact and precarious and is becoming even more so in the age of Internet news and bloggers. Under CSHB 2828's definition of a newspaper, *Texas Lawyer*, a mainstream publication whose articles are cited in the annotations of legal statutes, would not qualify as a "newspaper." That kind of flaw in the bill could create other exceptions that would require the Legislature to revisit the question.

Enhancing the penalty for any criminal offense likely will increase the demands upon the correctional resources of counties or the state. The state's correctional facilities are pressed to their limits, and Texas is struggling to find enough space for those already imprisoned. If the Legislature continues to enhance penalties, taxpayers will bear the burden.

NOTES:

The companion bill, SB 1208 by Carona, was reported favorably, as substituted, by the Senate Transportation and Homeland Security Committee on April 20.