

SUBJECT: Revising the disclosure of personal motor vehicle information

COMMITTEE: Transportation — committee substitute recommended

VOTE: 8 ayes — Pickett, Phillips, Callegari, Y. Davis, Dunnam, Guillen, Harper-Brown, Merritt

0 nays

3 absent — McClendon, T. Smith, W. Smith

WITNESSES: For — (*Registered, but did not testify:* Terri Hall, Texas TURF; Randall Peterson, 511Campaign.org)

Against — None

On — (*Registered, but did not testify:* Rebecca Davio, Texas Department of Transportation; Kennis Miles, Texas DPS; Brian Riemenschneider, Texas Department of Public Safety, Driver License Division)

BACKGROUND: Disclosure of personal information contained in motor vehicle records is governed federally by 18 U.S.C. § 2721, the Driver’s Privacy Protection Act. The Act prohibits a state department of motor vehicles from disclosing personal information about any individual or other restricted information without a person’s express consent. The Act allows personal information to be disclosed for use in connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls, or advisories, performance monitoring of motor vehicles and dealers by motor vehicle manufacturers, and for other specific purposes.

The Act allows an authorized recipient to resell or redisclose the information only for a use permitted and subject to specific restrictions.

Texas state law, Transportation Code, sec. 730.005, restricts the disclosure of personal information obtained in connection with a motor vehicle record. Personal information obtained by an agency regarding a motor vehicle record must be disclosed for use in connection with a matter concerning:

- motor vehicle or motor vehicle operator's safety;
- vehicle theft;
- vehicle emissions;
- motor vehicle product alterations, recalls, or advisories;
- performance monitoring of vehicles or dealers by a vehicle manufacturer;
- removal of non-owner records from the original owner records of a vehicle manufacturer to carry out certain purposes.

An authorized recipient of personal information cannot resell or redisclose the personal information in a substantially identical format in which it was disclosed, and may resell or redisclose the information only for a permitted use, as defined in law.

DIGEST:

CSHB 3672 would require that personal information obtained by an agency in connection with a vehicle would have to be disclosed for use in the normal course of the business of a recipient who sought the information for the purpose of processing or otherwise organizing the information for a third party in exchange for a fee. In this case, the recipient would have to:

- require a third party to establish clearly its authority to obtain the personal information under the law;
- inform third parties of the limitations on disclosure on subsequent use of the personal information;
- require third parties to agree in writing that any subsequent use of the personal information obtained from the authorized recipient will be in compliance with restrictions on resale and redisclosure; and
- retain evidence and documents for inspection for five years demonstrating compliance with the above provisions.

The added provisions would have to be applied uniformly to inquiring parties. An agency could not enforce a rule or policy that was inconsistent with the statutory provision governing the disclosure of information.

The bill would create a misdemeanor punishable by a fine up to \$25,000 for a person who misrepresented their identify or made a false statement with regard to the request for personal information.

The bill would take effect September 1, 2009.

SUPPORTERS
SAY:

CSHB 3672 would update state laws governing required disclosure of personal information associated with vehicles to reflect a recent federal court ruling. In a recent case, *Taylor v. Acxiom*, heard by the U.S. District Court for the Eastern District of Texas, a number of plaintiffs brought class actions against companies that resell personal information associated with motor vehicles as part of their business. As part of the court's decision against the plaintiffs, the federal district judge presiding over the case ruled that the federal Drivers Privacy Protection Act allowed for resale if an authorized recipient made the resale for a permitted use. The decision concluded that the principal question concerned whether the information was permissibly resold by an "authorized recipient" and not how the information is obtained.

CSHB 3672 would update state law to reflect this court decision by requiring TxDOT to disclose personal information obtained in relation to a vehicle, provided the requesting party resold the information only for permissible purposes. In the past, TxDOT has been hesitant to provide personal vehicle-related information to certain parties that acquire the information for use in their "normal course of business." The bill would prevent TxDOT from distributing information to some third parties, and not to others, provided a requestor's application for the information met the necessary and reasonable certification requirements. Further, a hefty penalty authorized in the bill would strongly discourage misuse of any personal information acquired through the bill.

OPPONENTS
SAY:

CSHB 3672 would be premature in making changes in state law on the basis of one lower court opinion. The standards set in *Taylor v. Acxiom* should not be codified at this time because the case still in on appeal. No statutory changes should be made until the case has been reviewed and the law settled finally.

The bill would go beyond the court's decision by requiring TxDOT to release information without adding clear guidance on what measures the agency could take to reject requests submitted by questionable actors. Diminishing the agency's discretion in releasing information that would be resold could increase instances of abuse of the information. In matters concerning sensitive personal information, the state should have broad powers to ensure such information is used strictly in accord with federal and state law.