

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1691

Bill Subtitle: TO CREATE THE INFORMATION PRACTICES ACT OF 2015; TO PROTECT THE RIGHT TO PRIVACY TO RESTRICT ACCESS TO CERTAIN GOVERNMENT RECORDS CONTAINING PERSONAL INFORMATION.

Basic Change : Sponsor: Representative Leding

The proposal adds a new chapter to Arkansas Code Title 25 to establish and regulate personal information obtained by state agencies. The proposal provides that state agencies may only maintain personal information when the information is relevant and necessary to accomplish an authorized purpose of the agency. The proposal also requires state agencies to establish procedures to safeguard the data and restricts access to any data which is maintained by the agency. The proposal defines the data which may be acquired and establishes noticing requirements to the individual concerning any data which is acquired or maintained. An agency maintaining this data must also notify the person of any data breaches.

The bill sets forth criteria for forms to be used to collect personal information and requires that the forms provide eight (8) items of information set forth in the bill. Motor Vehicle collects information on applications for title and registration and issues a registration certificate, which would not have sufficient space for the information required. Therefore, an additional form would be needed for each application for title and registration.

Currently the Office of Motor Vehicle provides several hundred thousand records weekly in bulk containing personal information to companies who use the records in accordance with the Federal Driver Privacy Protection Act (DPPA). Included in the uses of this information by these companies is notification to vehicle owners of vehicle manufacturer recalls and class actions suits against vehicle manufacturers. The bill prohibits disclosure of personal information without prior written voluntary consent of the individual obtained not more than thirty (30) days prior to the disclosure or a time limit agree to by the individual. If the department must comply with the notification provision, the administrative burden would be too great to continue providing such records. The bill states that the provisions with reference to motor vehicles do not apply to a person who has applied for and been issued a requestor code by the office, but does not define a "requestor code". If companies to whom records are provided in bulk may use a requestor code, and this code exempts the department from the notification requirement, the department could continue providing information to these companies.

Under current law, the Office of Motor Vehicle provides information in hard copy upon completion of forms stating the purpose the requestor will use the records in accordance with the Federal DPPA. No notification to the person to whom the record relates is required. The bill would require a notification. Under current law, the Office of Motor Vehicle may charge a one-dollar (\$1.00) fee per document for documents copied and certified. The bill states that an agency may not charge more than ten cents (\$.10) per page for copying a record.

The bill provides specific provisions for motor vehicles under Section 25-43-114. Since these provisions are specific to motor vehicles, it is not clear if provisions of the entire bill apply to the Office of Motor Vehicle.

The Office of Driver Services (DS) is required by the Arkansas Constitution, Arkansas law and federal law to collect personal information from persons during the application process for a driver's license and identification cards as well as maintaining accurate driving records. Information to update the driving records is obtained from courts and law enforcement. All personal information collected, maintained and disclosed by DS is in strict compliance with the state and federal Driver Privacy

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Protection Act (DPPA). Disclosure or sale of driving records is also governed by state law at § 27-50-906. This statute states no driver's record shall be reported to any individual except duly authorized officials unless a copy of the report and the name of the individual or organization which received the report are sent to the driver named in the report. No other state has this requirement or level of communication and protection of the record holder. The postage cost of meeting this requirement in calendar year 2014 was over \$500,000. This cost does not include paper, envelopes, programming or personnel to serve the drivers who call with questions concerning their record.

This bill will add additional requirements for DS. The bill requires the agency to use a form to collect personal information from an individual. In addition, the agency shall include a notice to the individual at least yearly containing information required in the bill. DS collects information directly from the individual at the Revenue Office when the individual applies or renews a driver's license or identification card. This information is entered directly into the system at the time the information is provided. All of this information is provided to the individual when the receipt for the transaction is printed. By requiring an additional form to be given and completed by the individual, this will greatly increase lines and wait times at the Revenue Office. Driver's licenses and identification cards are issued for a 4 year period. The information required on the notice to be given to the individual yearly will require an additional form to be printed and mailed or the form will need to be combined with the form given by the Office of Motor Vehicle (MV) annually when registering a vehicle.

DS currently meets the requirements of this bill concerning maintenance of records, contracts for the operation or maintenance of records, rules of conduct, safeguards, designation of employee responsible for agency compliance, and personal information, correction of errors, agencies owning or maintaining computerized information and policies concerning a security breach, inspection of personal information in records, amendment of records, denial of amendment of records, promises or understandings concerning the confidentiality of a source, prohibited distribution of name and address for commercial purposes.

§ 25-43-111 requires the Department of Finance and Administration to review all personal information in its possession every 5 years to determine whether it should continue to be exempt from access under § 25-43-124. DS does not purge any old records and has millions of records in the system. Under current Arkansas law all driving records are accessible to the driving record holder and § 25-43-124 would not apply to DS driving records.

This bill provides specific provision for motor vehicles under § 24-43-114 and states the MV shall establish by rule the administrative procedures with respect to the sale of information concerning registration of any vehicle or the sale of information from the files of drivers' licenses. Arkansas law at §27-50-906 through §27-50-910 authorizes DS, not MV, to provide or sell driver's records. Therefore this section will conflict with current law. Furthermore, the administrative procedures to be established by MV pursuant to this law require the agency to verify the name and address of the person making a request for personal information, notify the person to whom the personal information primarily relates, maintain the record of the request for a reasonable time. DS currently meets those requirements.

The bill states an agency shall adopt rules specifying procedures to be followed in order to implement each of the rights of individuals set forth in this chapter.

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This bill authorizes civil actions and injunctions against agencies if the agency violates a provision of this bill. If the agency is found by the court to have knowingly violated any part of this bill then the agency may be required to pay the complainant's attorney fees and litigation costs, actual damages sustained by the individual including damages for mental suffering.

A civil action against an individual who is not an employee of the state or local government agency acting in his or her official capacity; and intentionally discloses information not otherwise public which he or she knew or should have known was obtained from personal information maintained by a state agency is also allowed under this bill. In other words, a state or local government employee acting outside their official capacity may be sued under this bill. If the individual is found by the court to be in violation, the court may order special or general damages and shall award at least \$2,500 in exemplary damages plus the complainant's attorney's fees and litigation costs. A person who knowingly requests or obtains a record containing personal information from an agency in violation of this subchapter and under false pretenses is guilty of Class A misdemeanor.

Revenue Impact :

Approximately 2.6 million vehicles are registered each year and 2.2 million driver's licenses are issued. An additional document would be printed for the Office of Motor Vehicle and Office of Driver Services to provide notification required by the bill. Cost of these notifications would be ninety six thousand dollars (\$96,000) annually. A fee of twenty dollars fifty cents (\$20.50) per thousand records is collected from companies who purchase records in bulk. If the department must comply with the notification provision, the administrative burden would be too great to continue providing such records, which would create a loss to the State Central Services Fund of approximately one hundred sixty two thousand dollars (\$162,000) annually.

Revenue from driving record sales during the calendar year 2014 was approximately \$9,800,000. Approximately \$8,409,000 of this revenue is distributed to the Arkansas Highway and Transportation Department Fund and the remaining \$1,400,000 is distributed to the Revenue Division of DFA to defray the costs of the program. The additional requirements of this bill may cause record sales to decline and agency costs to increase.

Taxpayer Impact :

Taxpayers would be notified if another person or entity requests hardcopy records. Taxpayers would no longer receive notice of vehicle recalls and class action suits because the department could no longer provide records to companies who receive records in bulk that provide such notifications.

Resources Required :

If the Office of Motor Vehicle must comply with the notification provisions with regard to hard copy records provided, the office would need two (2) additional employees to research, prepare, and provide such notifications. Salaries and benefits for the additional employees would be \$48,130 annually. Additional paper and printer supplies and maintenance would be needed at a cost of \$96,000 annually. This cost includes the Office of Motor Vehicle and the Office of Driver Services.

Staff must be designated to administer required duties and to be responsible for agency compliance. In some cases staff will need to be hired and trained. Specific agency procedures will need to be written.

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Time Required :

Additional time will be required to implement all the changes required in this bill.

Procedural Changes :

Develop procedures to notify vehicle owners when their records are requested in hard copy. Program computer to print forms to provide notification to vehicle owners when they register their vehicles and obtain driver licenses. Discontinue procedures for providing records electronically in bulk.

Restrict the dissemination of individual records and specific agency policies and procedures will need to reflect the new rules.

Other Comments :

In accordance with Ark. Code Ann. § 26-18-303, records and files and any information obtained from these records or files that are required by state law to be filed with the Department of Finance and Administration are considered confidential and privileged information. The records maintained by the Department of Finance and Administration are exempt from disclosure unless there is a specific exception. The social security number of a taxpayer may not be currently disclosed to anyone other than the holder of the SSN under federal law.

The bill provides specific provisions for motor vehicles under Section 25-43-114. Since these provisions are specific to motor vehicles, it is not clear if provisions of the entire bill apply to the Office of Motor Vehicle.

This bill adds additional requirements which will reduce efficiency and productivity in DS, MV and the Revenue Offices. DS and MV currently follow procedures in the state and federal law regarding the capture and release of personal information.

Legal Analysis :

It is unclear why DFA is charged with reviewing records in its possession for compliance with HB1691. The Department does not possess expertise in the exemptions to disclosure that are based on law enforcement or other non-tax situations. The Department is not in a position to evaluate the legal necessity for retention of personal information in, for example, and adoption or foster case situation overseen by DHS.

Page 21, Line 22, contains a clerical error. "If the information" may be deleted.