

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1525

Bill Subtitle: REGARDING SEX OFFENDER REGISTRATION LAWS AND PARTIAL COMPLIANCE WITH THE ADAM WALSH CHILD PROTECTION AND SAFETY ACT OF 2006.

Basic Change :

Representative Gossage

Senator Woods

The bill adds a new provision to Arkansas law to make public, the vehicle identification number and license plate number of any vehicle owned by a level 3 or level 4 sex offender, classified as such by the Sex Offender Screening and Risk Assessment.

Revenue Impact :

None.

Taxpayer Impact :

People interested in obtaining information on sex offenders could obtain the license plate number and vehicle identification number of vehicles owned by sex offenders.

Resources Required :

No additional resources required.

Time Required :

Adequate time is provided.

Procedural Changes :

Develop a method to insure that the owner of a vehicle for which information is provided, is a sex offender as defined in under law.

Other Comments :

None

Legal Analysis :

The bill increases the information and documentation that law enforcement officers shall collect from a person subject to sex offender registration. The new requirements under the bill vary, in part, with sex offender level attributed to the person. Under the bill, officers shall collect a person's vehicle identification number and license tag of any vehicle the person owns or operates.

Under federal law, a person subject to registration is required to provide the license plate and a description of any vehicle owned or operated by the person, which shall be included in the sex offender registry. Also for inclusion in the registry, federal law requires the jurisdiction in which the person registers to provide a copy of the person's driver's license. With exceptions not relevant to these comments, all information contained in a state's sex offender registry shall be made available to the public in a manner readily accessible to all jurisdictions.

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In the bill, for certain sex offenders, the person's vehicle identification number (VIN) and the person's motor vehicle license tag shall be made public. Also, because the bill extends to all vehicles that the person operates, DFA may be compelled to release vehicle tax numbers registered to persons that are not registered sex offenders. Of concern to DFA is that the bill may directly or indirectly compel public disclosure by DFA of information that may be subject to protection under the Driver Privacy Protection Act, 18 U.S.C. § 2721, et seq (DPPA). The DPPA prohibits DFA from releasing "personal information" or "highly restricted personal information" from a person's "motor vehicle record".

"Personal information" means information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver's status. "Highly restricted personal information" means an individual's photograph or image, social security number, medical or disability information. "Motor vehicle record" means any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles.

Because the DPPA defines "personal information" as "information that identifies an individual," a person's VIN or vehicle license tag contained in DFA motor vehicle records may be a protected item of personal information under the DPPA. If such information is protected, DFA may only release the information pursuant to permissible use under the DPPA. The disclosure of personal information "[f]or use 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 Federal, State, or local agency in carrying out its functions" is permitted by the DPPA/

Please note that the redisclosure of protected information by a recipient of protected information is also restricted by the DPPA. A recipient of protected information may redisclose the information only for a use permitted under the DPPA. In addition, the recipient of information must keep for a period of five (5) years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request.

Under the bill, it is not clearly specified how the law enforcement officer will obtain the person's VIN and tag number(s). More specifically, it is not clear whether the tag information shall be obtained directly from the sex offender or if the officer shall obtain this information as provided in the DPPA.

It is possible that Congress, in enacting the federal sex offender registration law twelve years after the DPPA, intended that such information not be subject to DPPA protection. However, strict civil and criminal penalties in addition to civil liability may apply to the mishandling of DPPA-protected information. It is recommended that the bill specify the methods that protected information be obtained by a government agency from DFA as well as how that government agency shall comply with the redisclosure requirements of the DPPA.

This bill does not have an emergency clause or effective date.

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