

- SUBJECT:** Keeping motor vehicle accident reports confidential for 30 days
- COMMITTEE:** Transportation — committee substitute recommended
- VOTE:** 7 ayes — Pickett, Phillips, Callegari, Guillen, Harper-Brown, T. Smith, W. Smith
- 0 nays
- 4 absent — Y. Davis, Dunnam, McClendon, Merritt
- WITNESSES:** For — Albert Betts, Association of Fire and Casualty Companies of Texas; Greg Nelson, Texas Chiropractic Association (*Registered, but did not testify*: Richar Hardy, Accident and Injury Pain Centers Group, Wymmewood Village, Dallas, TX; Lee Loftis, Independent Insurance Agents of Texas; Keith Oakley, Texas Association of Licensed Investigators)
- Against — (*Registered, but did not testify*: Ron Hickman, Constables Legislative Committee, Justices of the Peace and Constables Association)
- On — Carlos Lopez and Carol Rawson, Texas Department of Transportation
- BACKGROUND:** The federal Driver Privacy Protection Act prohibits state departments of motor vehicles from knowingly disclosing 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 re-disclosure of the information.
- In response to federal law, the 75th Legislature in 1997 enacted SB 1069 by Moncrief, which restricted the 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 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 provides two facts about the accident.

DIGEST:

CSHB 1634 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.

CSHB 1634 would provide exemptions for the release of the information within the first 30 days of the accident upon a request by:

- a 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 FCC-licensed radio or television station that requested the information as part of an investigation of the accident;
- a newspaper that was qualified to publish legal notices, or a free newspaper published at least once a week, disseminated to the general public, and that requested the information as part of an investigation of the accident;
- other local, state, and federal agencies authorized to have access to accident reports; and
- a licensed private investigator that requested the information as part of an investigation into the cause of an accident or to secure evidence for use before a court.

CSHB 1634 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, published only advertising, or published only the name and personal information of persons involved in vehicle accidents. The bill would not prevent radio and television stations and newspapers from using accident reports for news stories.

Accident reports would be available during the 30 days after the accident only 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. A vendor would have to observe the same procedures that applied to a government.

Intentional release of confidential and privileged information in an accident report by a government employee would be a class C misdemeanor (maximum fine of \$500). A person who attempted to wrongfully access a report or who used a report for a purpose contrary to the uses to which they agreed would commit a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000), if the person had no prior related offenses. A person with a related prior offense would be subject to a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000), with two related offenses, a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000), and with three or more related offenses, a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000).

The bill would take effect on September 1, 2009.

**SUPPORTERS
SAY:**

CSHB 1634 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. These medical clinics typically prey 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 are needed to make fraud prevention efforts effective. CSHB 1634 would help provide a deterrent to unauthorized release of confidential information by government employees or those authorized to have the information. Concerns that this bill may aggravate prison overcrowding problems are exaggerated.

CSHB 1634 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 news media’s rights under the First Amendment. The U.S. Supreme Court has held in 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. CSHB 1634 is narrowly tailored and would withstand judicial review under current court rulings.

The bill would set forth a clear list of the people eligible to receive accident reports as well as clear standards to which people requesting these reports must adhere. The added restrictions might impose a temporary inconvenience on clerks processing the requests, but this would ease over time as clerks became more familiar with the new standards for release. Large counties could take additional measures within existing budgets to help clerks become accustomed to applying the new criteria.

**OPPONENTS
SAY:**

CSHB 1634 would represent yet another 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 would repeat some of the flaws with its restrictions and waiting period that caused SB 1069 to be ruled unconstitutional.

The bill would jeopardize the operations of legitimate companies that collect accident reports from governmental agencies on behalf of insurance companies, attorneys, and others. 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 1634'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.

Increasing the criminal penalty for release of accident reports would increase the demands on the correctional resources of counties and 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.

OTHER
OPPONENTS
SAY:

CSHB 1634 would place an inordinate burden on the government clerks that process requests for accident reports. In large counties, such as Harris, there are many requests filed per day, and government clerks may have difficulty discerning who is qualified under the law to receive a report. This would be an unfair imposition, as making legal determinations of this nature is not part of a clerk's job description and would require additional training. Requests should be accompanied by some type of pre-certified document that the person making the request met the criteria set forth in the bill.

Further, the bill would raise questions about how clerks should address requests for accident reports that are faxed or mailed into the office. In these instances, the clerks may not be able to verify the identity of the person making the request. The bill should specifically address how government officials should process requests that are not physically delivered by an inquiring party.