



Phil Mullin

*Bill Analysis*  
*Legislative Service Commission*

## **H.B. 636**

123rd General Assembly  
(As Introduced)

**Reps. Damschroder, Cates, D. Miller, Taylor, Schuler, Grendell, Evans, Allen, Buchy, Jordan, Metzger, Hoops, Boyd, Pringle, Verich, Redfern, Winkler, Metelsky, Schuring, Hood, Flannery, Britton, Young**

---

### **BILL SUMMARY**

- Prohibits the disclosure of personal information contained in a public record to a person intending to use or forward the information for surveys, marketing, solicitation, or resale for commercial purposes unless the subject of the record signs a written authorization permitting that disclosure.

---

### **CONTENT AND OPERATION**

#### **Public Records Law**

##### **Existing law**

**"Public record" definition.** Existing law generally defines a "public record" as any record that is kept by any public office, including, but not limited to, state, county, city, village, township, and school district units. "Public record" *does not include any of the following*: medical records; records pertaining to probation and parole proceedings; records pertaining to "judicial bypass" proceedings under the existing Abortion Notification Law or the existing Abortion Informed Consent Law and to related appeals; records pertaining to adoption proceedings, including the contents of an adoption file maintained by the Department of Health; information in a record contained in the putative father registry; certain other adoption-related records; trial preparation records; confidential law enforcement investigatory records; mediation-related or Civil Rights Commission-related records containing information that is confidential; DNA records stored in the DNA database; inmate records released by the Department of Rehabilitation and Correction (DRC) to the Department of Youth Services (DYS) or a court of record; records maintained by DHS pertaining to children in its custody released by DHS to DRC; intellectual property records;

donor profile records; child support-related records maintained by the Department of Human Services; peace officer residential and familial information; trade secret information of a country hospital; or records the release of which is prohibited by state or federal law. (Sec. 149.43(A)(1).)

**General right of access to public records.** The Public Records Law imposes the following duties upon entities that exercise governmental functions regarding their records: all covered public records must be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours; upon request, a public office or person responsible for public records is required to make copies available at cost, within a reasonable period of time; and in order to facilitate broader access to public records, public offices are required to maintain public records in a manner that they can be made available for inspection in accordance with the provisions described above (sec. 149.43(B)(1)).

**Choice of medium for copy of public record to be provided.** If any person chooses to obtain a copy of a public record, the public office or person responsible for the record must permit that person to choose to have the record duplicated upon paper, upon the same medium upon which the public office or person responsible keeps the record, or upon any other medium upon which the public office or person responsible determines that the record reasonably can be duplicated as an integral part of normal operations. When the person seeking the copy makes a choice under this provision, the public office or person responsible must provide a copy of the public record in accordance with the choice made by the person seeking the copy. (Sec. 149.43(B)(2).)

**Mailing of copy of public record.** Upon request, a public office or person responsible for public records must transmit a copy of a public record to any person by United States mail within a reasonable time after receiving the request for the copy. The public office or person responsible may require the person making the request to pay in advance the cost of postage and other supplies used in the mailing. Any public office may adopt a policy and procedures that it will follow in transmitting, within a reasonable period of time after receiving a request, copies of public records by United States mail. (Sec. 149.43(B)(3).)

**Remedy for violation of the general right of access to public records.** Under current law, if a person allegedly is aggrieved by the failure of a public office to promptly prepare a public record and to make it available to the person for inspection in accordance with the general right of access to public records, or if a person who requested a copy of a public record allegedly is aggrieved by the failure of a public office or the person responsible for the public record to make a copy available in accordance with the general right of access, the person allegedly aggrieved may commence a mandamus action to obtain a judgment that orders the

public office or the person responsible for the public record to comply with the general right of access and that awards reasonable attorney's fees to the person allegedly aggrieved (sec. 149.43(C)).

**Limited exception for certain Bureau of Motor Vehicles records.** Existing law authorizes the Bureau of Motor Vehicles to adopt rules under the Administrative Procedure Act to reasonably limit the number of "bulk commercial special extraction requests" made by a person for the same records or for updated records during a calendar year. The rules may include provisions for charges to be made for bulk commercial special extraction requests for the Bureau's "actual cost," plus "special extraction costs," plus 10%. The Bureau may charge for expenses for redacting information, the release of which is prohibited by law. (Sec. 149.43(E)(1).)

### **Changes made by the bill**

**General prohibition against disclosing personal information.** Except as described under "**When personal information may be disclosed,**" below, the bill prohibits a public office or person responsible for public records from knowingly disclosing or otherwise making available to a person that intends to use or forward the information *for surveys, marketing, solicitation, or resale for commercial purposes* any personal information about an individual that the public office or person responsible for the public records obtains in connection with the preparation or maintenance of public records (sec. 149.43(B)(1) and (F)(1)).

The bill relatedly (1) defines "personal information" as information that identifies an individual, including, but not limited to, an individual's photograph or digital image, Social Security number, driver or driver's license identification number, name, telephone number, medical or disability information, or address other than a five-digit zip code number and (2) provides that "surveys, marketing, solicitation, or resale for commercial purposes" must be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research (sec. 149.43(E)(3) and (F)(3)). As under existing law, "commercial" means profit-seeking production, buying, or selling of any good, service, or other product (sec. 149.43(E)(2)(c)).

**When personal information may be disclosed.** Under the bill, a public office or a person responsible for public records may disclose or otherwise make available to a person that intends to use or forward the information for surveys, marketing, solicitation, or resale for commercial purposes personal information about an individual that the public office or person responsible for public records

obtains in connection with the preparation or maintenance of public records, if all of the following requirements are met (sec. 149.43(B)(1) and (F)(2)):

(1) The public office or person responsible for public records previously has informed, or presently informs, an individual who is the subject of a public record that personal information about that individual obtained in connection with the preparation or maintenance of the public record cannot be disclosed or otherwise made available to another person for use or forwarding for surveys, marketing, solicitation, or release for commercial purposes, unless that individual first signs a *written authorization* permitting that disclosure or other availability.

(2) An individual referred to in item (1) above previously has signed or presently signs a written authorization permitting the personal information about that individual in the public record to be disclosed or otherwise made available to another person for use or forwarding for surveys, marketing, solicitation, or resale for commercial purposes.

(3) The public office or person responsible for public records retains the signed authorization for each individual whose personal information may be disclosed or otherwise made available to another person.

(4) The public office or person responsible for public records notifies each individual who signs a written authorization about any procedure established by the public office or person responsible for public records under which the individual may cancel that authorization.

**Bulk commercial special extraction requests.** The bill continues the Public Records Law's Bureau of Motor Vehicles-related limited exception pertaining to bulk commercial special extraction requests. But it specifically states that the Bureau's rules pertaining to those requests must be consistent with the bill's above-described "personal information" nondisclosure and permissible disclosure provisions. (Sec. 149.43(E)(1).)

### **Bureau of Motor Vehicles Personal Information Protection Law**

#### **Existing law**

Existing law generally prohibits the Registrar of Motor Vehicles, or an employee or contractor of the Bureau of Motor Vehicles, on and after September 13, 1997, from knowingly disclosing or otherwise making available to any person or entity any "personal information" (defined in this provision of current law in the same way that the bill defines it) about an individual that the Bureau obtained in connection with a motor vehicle record (sec. 4501.27(A)). Existing law, however, does authorize the Registrar, or an employee or contractor

of the Bureau, on and after September 13, 1997, to disclose personal information about an individual that the Bureau obtained in connection with a motor vehicle record for use in connection with certain specified matters (sec. 4501.27(B)(2)).

One of these specified matters is for bulk distribution *for surveys, marketing, or solicitations*, if the Bureau has implemented methods and procedures to ensure all of the following (sec. 4501.27(B)(2)(m)):

(1) That individuals are provided, in a clear and conspicuous manner, an opportunity to prohibit uses of this nature and, when a transaction is performed in person, the individual is given verbal notice that personal information collected by the Bureau on or in relation to the forms for the issuance or renewal of a driver's or commercial driver's license, a motor vehicle certificate of title, a motor vehicle registration and license plates, and an identification card may be disclosed for uses of this nature;

(2) That the information will be used, rented, or sold solely for bulk distribution for surveys, marketing, or solicitations, and that those surveys, marketing, and solicitations will not be directed at an individual who has requested in a timely fashion that the surveys, marketing, and solicitations not be directed at that individual.

Finally, under existing law, on and after September 13, 1997, an authorized recipient of personal information for bulk distribution purposes may resell or redisclose the information subject to the restrictions specified in items (1) and (2) in the immediately preceding paragraphs (sec. 4501.27(C)).

**Changes made by the bill**

The bill removes the restrictions described in items (1) and (2) above and substitutes a requirement that the Bureau implement, in relation to bulk distributions for surveys, marketing, solicitations, *or resale for commercial purposes* (the last clause added by the bill), methods and procedures that restrict the release of personal information as described under "**Changes made by the bill**" under "**Public Records Law**," above (sec. 4501.27(B)(2)(m)). The bill also removes the associated provision of existing law that allows a resale or redisclosure of personal information on and after September 13, 1997, subject to the restrictions described in items (1) and (2) above (sec. 4501.27(C)).

---

**HISTORY**

ACTION	DATE	JOURNAL ENTRY
--------	------	---------------

Introduced

03-29-00

p. 1742

H0636-I.123/ejs

