

AMENDED IN ASSEMBLY AUGUST 15, 2013

AMENDED IN ASSEMBLY JUNE 24, 2013

AMENDED IN SENATE MAY 28, 2013

AMENDED IN SENATE APRIL 8, 2013

SENATE BILL

No. 397

**Introduced by Senator Hueso
(Coauthors: Senators Block and Lara)**

February 20, 2013

An act to add Chapter 8 (commencing with Section 15400) to Division 6 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 397, as amended, Hueso. Vehicles: enhanced driver's license.

Existing law requires the Department of Motor Vehicles, upon proper application, to issue driver's licenses and identification cards.

The federal Western Hemisphere Travel Initiative facilitates travel within the western hemisphere by authorizing the use of enhanced driver's licenses and identification cards meeting specified requirements as travel documents.

This bill would authorize the Department of Motor Vehicles to enter into a memorandum of understanding with a federal agency for the purpose of facilitating travels within the western hemisphere pursuant to the federal Western Hemisphere Travel Initiative through the issuance of an enhanced driver's license, instruction permit, provisional license, or identification card. The bill would authorize the department to issue or renew, upon request, an enhanced driver's license, instruction permit, provisional license, or identification card for specified persons. The bill would require a person applying for the initial issuance or renewal of

an enhanced driver's license, instruction permit, provisional license, or identification card to submit, under the penalty of perjury, additional proof of identity, residency, and citizenship that satisfies the requirements of the federal Western Hemisphere Travel Initiative. Because the knowledge of the submission of fraudulent information is a crime, the bill would create a new crime, thereby imposing a state-mandated local program. The bill would, except as specified, prohibit the disclosure of information submitted to the department. Because a violation of the Vehicle Code is a crime, this bill would impose a state-mandated local program.

The bill would prohibit an employer from requiring an employee to apply for, or use, an enhanced driver's license or identification card as a condition of employment or to discriminate or otherwise retaliate against an employee who refuses to apply for, or use, an enhanced driver's license or identification card. Because a violation of this provision would be a crime, this bill would impose a state-mandated local program.

The bill would also require the department to submit an annual report to specified committees of the Legislature on the implementation of the enhanced driver's license and identification card. The bill would require a person applying for an enhanced driver's license, instruction permit, provisional license, or identification card to submit an additional application fee. The bill would require the department to set, by regulation, the application fee in an amount not to exceed the reasonable regulatory cost of issuing or renewing the license, permit, or identification card, or \$55, whichever is less, *and to provide specified information to the applicant*. The bill would establish the Enhanced Driver's License and Identification Card Subaccount in the Motor Vehicle Account and would require the additional fee to be deposited into the subaccount. The bill would, upon appropriation by the Legislature, require the moneys in the subaccount to be expended by the department in implementing the above provisions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Each year, more than 45 million personal vehicle passengers
4 and 15 million pedestrians enter the state from Mexico.

5 (b) Border crossers have an economic impact on the state,
6 accounting annually for \$4.05 billion in economic benefits and
7 67,000 jobs.

8 (c) Border wait times during peak hours average 120 minutes
9 on weekdays and even longer on weekends.

10 (d) More than eight million trips are lost due to congestion each
11 year in the San Ysidro Port of Entry, the busiest port of entry in
12 the world.

13 (e) In the San Diego region alone, this translates into a revenue
14 loss of nearly \$1.03 billion, three million potential working hours,
15 35,000 jobs, and \$42 million in wages.

16 (f) It is estimated that border wait times will significantly
17 increase in the future and an additional 15 minutes in border wait
18 times will affect productivity in the binational border region by
19 an additional \$1 billion in costs and a loss of 134,000 jobs.

20 (g) Because border wait times impede international travel, trade,
21 and commerce, the Legislature must act to protect California's
22 jobs and economy.

23 (h) After the 9/11 attacks, the federal government enacted the
24 federal Western Hemisphere Travel Initiative (WHTI)(Public Law
25 110-53 and Public Law 108-458), to facilitate entry for United
26 States citizens and legitimate foreign visitors, while strengthening
27 United States border security, by requiring United States and
28 Canadian travelers to present a passport or other documents that
29 denote identity and citizenship when entering the United States.
30 The documentation requirements of the WHTI went into effect in
31 2007 for air travel into the United States and in 2009 for land and
32 sea travel.

33 (i) In addition to a passport and other documents, the federal
34 government approved, for cross-border travel, the use of an
35 enhanced driver's license (EDL), which is a standard state-issued
36 driver's license that has been enhanced in process, technology,
37 and security to denote identity and citizenship for purposes of
38 entering the United States at the land and sea ports of entry. An

1 EDL contains radio frequency identification (RFID) technology,
2 which allows information contained in a wireless device or tag to
3 be read from a distance, and eliminates the need to key in travelers,
4 translating into 60 percent faster processing than manual queries.

5 (j) Another advantage of an EDL is that it can be used in Ready
6 Lanes, which were created by the United States Customs and
7 Border Protection and are used as primary vehicle lanes dedicated
8 to travelers who possess RFID-enabled travel documents.

9 (k) The use of an EDL as an RFID-enabled travel document is
10 already in place in the States of Washington, New York, Michigan,
11 and Vermont.

12 (l) The use of EDLs in the state will open the way for the United
13 States Customs and Border Protection to convert more vehicle
14 lanes into Ready Lanes, which will decrease border wait times by
15 an average of 30 minutes and thus provide a significant, long-term
16 economic benefit to the state, while strengthening border security.

17 SEC. 2. Chapter 8 (commencing with Section 15400) is added
18 to Division 6 of the Vehicle Code, to read:

19

20 CHAPTER 8. ENHANCED DRIVER'S LICENSE AND IDENTIFICATION
21 CARD

22

23 15400. The department may enter into a memorandum of
24 understanding with a federal agency for the purposes of obtaining
25 approval for the issuance of an enhanced driver's license,
26 instruction permit, provisional license, or identification card that
27 is acceptable as proof of identity and citizenship pursuant to the
28 federal Western Hemisphere Travel Initiative (Public Law 110-53
29 and Public Law 108-458).

30 15401. (a) Upon the request of an applicant, the department
31 may issue an initial enhanced driver's license, instruction permit,
32 provisional license, or identification card to, or renew the enhanced
33 driver's license, instruction permit, provisional license, or
34 identification card of, a person who satisfies all of the following:

- 35 (1) Is 16 years of age or older.
- 36 (2) Is a resident of this state.
- 37 (3) Is a citizen of the United States.

38 (b) (1) In addition to other information required pursuant to
39 Chapter 1 (commencing with Section 12500), the applicant shall
40 submit sufficient proof that meets the requirements of the federal

1 Western Hemisphere Travel Initiative (Public Law 110-53 and
2 Public Law 108-458) to establish his or her identity, residency,
3 and citizenship.

4 (2) The applicant shall certify, under the penalty of perjury, that
5 the information submitted pursuant to paragraph (1) is true and
6 correct to the best of the knowledge of the applicant.

7 (3) The applicant shall sign a declaration acknowledging his or
8 her understanding of radio frequency identification technology.

9 (c) The department shall include, in the enhanced driver's
10 license, instruction permit, provisional license, or identification
11 card, reasonable security measures, including tamper-resistant
12 features to prevent unauthorized duplication or cloning and to
13 protect against unauthorized disclosure of personal information
14 regarding the person who is the subject of the license, permit, or
15 card.

16 (d) The enhanced driver's license, instruction permit, provisional
17 license, or identification card shall include both of the following:

18 (1) Radio frequency identification technology that will contain
19 only a randomly assigned number that shall be encrypted if agreed
20 to by the United States Department of Homeland Security, and
21 shall not contain any *other* personal data, biometric information,
22 or number other than the randomly assigned number.

23 (2) A machine readable zone or barcode that can be
24 electronically read by the cross border patrol and contains only as
25 much information as is required by the federal Western Hemisphere
26 Travel Initiative (Public Law 110-53 and Public Law 108-458) to
27 permit a border crossing.

28 (e) An enhanced driver's license may be suspended, revoked,
29 or restricted pursuant to this code.

30 (f) (1) An employer shall not require an employee to apply for,
31 or use, an enhanced driver's license or identification card as a
32 condition of employment.

33 (2) An employer shall not discharge an employee or otherwise
34 discriminate or retaliate against an employee who refuses to apply
35 for, or use, an enhanced driver's license or identification card.

36 (g) *The department shall inform the applicant, either orally or*
37 *in writing, that the randomly assigned radio frequency*
38 *identification number can be read remotely without the holder's*
39 *knowledge, especially if the enhanced driver's license, instruction*

1 *permit, provisional license, or identification card is not enclosed*
2 *in a protective shield or similar tamper-resistant device.*

3 15402. (a) An applicant applying for an initial enhanced
4 driver's license, instruction permit, provisional license, or
5 identification card, or renewing an enhanced driver's license,
6 instruction permit, provisional license, or identification card, shall
7 have his or her ~~facial image~~ *photograph* and signature captured or
8 reproduced by the department at the time of application or renewal.

9 (b) The ~~facial image~~ *photograph* and signature shall only be
10 available to the United States Customs and Border Protection
11 database or as required by the United States Department of
12 Homeland Security for purposes of facilitating the purpose of the
13 federal Western Hemisphere Travel Initiative (Public Law 110-53
14 and Public Law 108-458).

15 (c) Except as provided in subdivision (b), the department shall
16 not disclose the person's ~~facial image~~ *photograph* or signature, or
17 copies of a digital image of any document required pursuant to
18 this chapter.

19 (d) (1) The department shall examine and verify the
20 genuineness, regularity, and legality of an application and proof
21 submitted to the department for an initial issuance or renewal of
22 an enhanced driver's license, instruction permit, provisional license,
23 or identification card.

24 (2) The department may require the submission of additional
25 information to establish identity, residency, and citizenship.

26 (3) The department shall deny an application or renewal of an
27 enhanced driver's license, instruction permit, provisional license,
28 or identification card if the department is not satisfied with the
29 genuineness, regularity, and legality of the application or
30 supporting documentation or the truth of any statement contained
31 in the application or supporting documentation, or for any other
32 reason authorized by law.

33 (4) An applicant may, pursuant to Article 3 (commencing with
34 Section 14100) of Chapter 3, appeal the department's denial of an
35 application for the issuance or renewal of an enhanced driver's
36 license, instruction permit, provisional license, or identification
37 card.

38 (e) The department shall retain copies or digital images of
39 documents provided by the person pursuant to this chapter.

1 (f) Notwithstanding subdivision (e), and except as required by
2 other law, in the case of the denial of an application for the issuance
3 or renewal of an enhanced driver's license, instruction permit,
4 provisional license, or identification card, the department shall
5 retain the ~~facial image~~ *photograph* of the applicant and the reason
6 for denial for not less than one year, unless fraud is suspected, in
7 which case the applicant's ~~facial image~~ *photograph* and the reason
8 for denial shall be retained for not less than 10 years.

9 (g) The ~~facial image~~ *photograph*, signature, copies, and digital
10 image of documents required pursuant to this section are exempt
11 from public disclosure pursuant to the California Public Records
12 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
13 of Title 1 of the Government Code).

14 (h) Except as required by federal law, information submitted
15 by an applicant pursuant to this chapter shall not be disclosed to
16 a foreign nation.

17 15403. (a) In addition to fees required pursuant to this division,
18 a person requesting the initial issuance or renewal of an enhanced
19 driver's license, instruction permit, provisional license, or
20 identification card shall submit an additional nonrefundable
21 application fee with the application. The department shall set, by
22 regulation, the application fee in an amount not to exceed the
23 reasonable regulatory cost of issuing or renewing that license,
24 permit, or identification card, or fifty-five dollars (\$55), whichever
25 is less.

26 (b) Fees submitted shall be deposited into the Enhanced Driver's
27 License and Identification Card Subaccount established pursuant
28 to Section 15404.

29 15404. (a) There is hereby established the Enhanced Driver's
30 License and Identification Card Subaccount in the Motor Vehicle
31 Account. Moneys in the subaccount shall, upon appropriation by
32 the Legislature, be expended by the department to implement this
33 chapter.

34 (b) Moneys in the subaccount, including any interest accrued,
35 shall remain in the subaccount at the end of each fiscal year.

36 (c) *Sections 15401 to 15405, inclusive, are not intended to*
37 *conflict with any other state or federal law.*

38 15405. The department shall submit an annual report in
39 compliance with Section 9795 of the Government Code to the
40 Assembly and Senate Committees on Judiciary, the Senate

1 Committee on Transportation and Housing, and the Assembly
2 Committee on Transportation. The report shall include, but not be
3 limited to, information on the number of enhanced driver's licenses
4 and identification cards issued, the effect on wait times and traffic
5 congestion at points of entry, and whether or not there have been
6 any security or privacy breaches related to the use of the enhanced
7 driver's licenses and identification cards.

8 SEC. 3. No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section 17556 of
14 the Government Code, or changes the definition of a crime within
15 the meaning of Section 6 of Article XIII B of the California
16 Constitution.