

AMENDED IN ASSEMBLY JULY 16, 2015

AMENDED IN SENATE APRIL 30, 2015

SENATE BILL

No. 249

Introduced by Senator Hueso

February 18, 2015

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 249, 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 travel 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. By

expanding the scope of the crime of perjury, this bill would impose a state-mandated local program. *The bill would require the department to provide a protective shield for the enhanced driver's license, instruction permit, provisional license, or identification card.*

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~~ *license, instruction permit, provisional license, or identification card.* The bill would authorize an employee who is discriminated or retaliated against by his or her employer because the employee has exercised his or her rights pursuant to those prohibitions to file a complaint with the Division of Labor Standards Enforcement, as specified. Because a violation of those employer prohibitions 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~~ *license, instruction permit, provisional 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 bill would prohibit specified information submitted by an applicant for an enhanced driver's license, instruction permit, provisional license, or identification card from being disclosed by the department, as specified. *The bill would make all laws related to the privacy or security of a driver's license, instruction permit, provisional license, or identification document, or a similar document, or regulating the use, access or sharing of information, applicable to enhanced driver's licenses, instruction permits, provisional licenses, and identification cards.*

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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 45,000,000 personal vehicle passengers
4 and 15,000,000 pedestrians enter the state from Mexico.

5 (b) Border crossers have an economic impact on the state,
6 accounting annually for \$4,005,000,000 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 8,000,000 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 \$1,003,000,000, 3,000,000 potential working hours,
15 35,000 jobs, and \$42,000,000 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 \$1,000,000,000 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

1 110-53 and Public Law 108-458), to facilitate entry for United
 2 States citizens and legitimate foreign visitors, while strengthening
 3 United States border security, by requiring United States and
 4 Canadian travelers to present a passport or other documents that
 5 denote identity and citizenship when entering the United States.
 6 The documentation requirements of the WHTI went into effect in
 7 2007 for air travel into the United States and in 2009 for land and
 8 sea travel.

9 (i) In addition to a passport and other documents, the federal
 10 government approved, for cross-border travel, the use of an
 11 enhanced driver’s license (EDL), which is a standard state-issued
 12 driver’s license that has been enhanced in process, technology,
 13 and security to denote identity and citizenship for purposes of
 14 entering the United States at the land and sea ports of entry. An
 15 EDL contains radio frequency identification (RFID) technology,
 16 which allows information contained in a wireless device or tag to
 17 be read from a distance, and eliminates the need to key in travelers,
 18 translating into 60 percent faster processing than manual queries.

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

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

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

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

33

34 CHAPTER 8. ENHANCED DRIVER’S LICENSE AND IDENTIFICATION
 35 CARD

36

37 15400. The department may enter into a memorandum of
 38 understanding with a federal agency for the purposes of obtaining
 39 approval for the issuance of an enhanced driver’s license,
 40 instruction permit, provisional license, or identification card that

1 is acceptable as proof of identity and citizenship pursuant to the
2 federal Western Hemisphere Travel Initiative (Public Law 110-53
3 and Public Law 108-458).

4 15401. (a) Upon the request of an applicant, the department
5 may issue an initial enhanced driver's license, instruction permit,
6 provisional license, or identification card to, or renew the enhanced
7 driver's license, instruction permit, provisional license, or
8 identification card of, a person who satisfies all of the following:

- 9 (1) Is 16 years of age or older.
10 (2) Is a resident of this state.
11 (3) Is a citizen of the United States.

12 (b) (1) In addition to other information required pursuant to
13 Chapter 1 (commencing with Section 12500), the applicant shall
14 submit sufficient proof that meets the requirements of the federal
15 Western Hemisphere Travel Initiative (Public Law 110-53 and
16 Public Law 108-458) to establish his or her identity, residency,
17 and citizenship.

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

21 (3) The department shall *provide a protective shield at the time*
22 *the enhanced driver's license, instruction permit, provisional*
23 *license, or identification card is issued to the individual, and* inform
24 the applicant in writing that the randomly assigned radio frequency
25 identification number can be read remotely without the holder's
26 knowledge, if the enhanced driver's license, instruction permit,
27 provisional license, or identification card is not enclosed in a
28 ~~protective shield or similar tamper-resistant device.~~ *the protective*
29 *shield.*

30 (4) The applicant shall sign a declaration acknowledging his or
31 her understanding of radio frequency identification ~~technology.~~
32 *technology and the purpose of the protective shield.*

33 (c) The department shall include, in the enhanced driver's
34 license, instruction permit, provisional license, or identification
35 card, reasonable security measures, including tamper-resistant
36 features to prevent unauthorized duplication or cloning and to
37 protect against unauthorized disclosure of personal information
38 regarding the person who is the subject of the license, permit, or
39 card.

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

3 (1) Radio frequency identification technology that will contain
4 only a randomly assigned number that shall be encrypted if agreed
5 to by the United States Department of Homeland Security, and
6 shall not contain any other personal data, biometric information,
7 or number other than the randomly assigned number.

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

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

15 (f) (1) An employer shall not require an employee to apply for,
16 or use, an enhanced driver's ~~license~~ *license, instruction permit,*
17 *provisional license,* or identification card as a condition of
18 employment.

19 (2) An employer shall not discharge an employee or otherwise
20 discriminate or retaliate against an employee who refuses to apply
21 for, or use, an enhanced driver's ~~license~~ *license, instruction permit,*
22 *provisional license,* or identification card.

23 (3) An employee who is discharged, threatened with discharge,
24 demoted, suspended, or in any other manner discriminated or
25 retaliated against in the terms and conditions of employment by
26 his or her employer because the employee has exercised his or her
27 rights as set forth in this subdivision may file a complaint with the
28 Division of Labor Standards Enforcement of the Department of
29 Industrial Relations pursuant to Section 98.7 of the Labor Code.

30 (4) Notwithstanding any time limitation in Section 98.7 of the
31 Labor Code, an employee may file a complaint with the Division
32 of Labor Standards Enforcement of the Department of Industrial
33 Relations based upon a violation of this subdivision within one
34 year from the date of occurrence of the violation.

35 15402. (a) An applicant applying for an initial enhanced
36 driver's license, instruction permit, provisional license, or
37 identification card, or renewing an enhanced driver's license,
38 instruction permit, provisional license, or identification card, shall
39 have his or her photograph and signature captured or reproduced
40 by the department at the time of application or renewal.

1 (b) The photograph and signature shall only be available to the
2 United States Customs and Border Protection database or as
3 required by the United States Department of Homeland Security
4 for purposes of facilitating the purpose of the federal Western
5 Hemisphere Travel Initiative (Public Law 110-53 and Public Law
6 108-458).

7 (c) Except as provided in subdivision (b), the department shall
8 not disclose the person's photograph or signature, or copies of a
9 digital image of any document required pursuant to this chapter.
10 *All laws related to the privacy or security of a driver's license,*
11 *instruction permit, provisional license, or identification document,*
12 *or a similar document, or regulating the use, access, or sharing*
13 *of information, apply to enhanced driver's licenses, instruction*
14 *permits, provisional licenses, and identification cards.*

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

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

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

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

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

36 (f) Notwithstanding subdivision (e), and except as required by
37 other law, in the case of the denial of an application for the issuance
38 or renewal of an enhanced driver's license, instruction permit,
39 provisional license, or identification card, the department shall
40 retain the photograph of the applicant and the reason for denial for

1 not less than one year, unless fraud is suspected, in which case the
2 applicant's photograph and the reason for denial shall be retained
3 for not less than 10 years.

4 (g) The photograph, signature, copies, and digital image of
5 documents required pursuant to this section are exempt from public
6 disclosure pursuant to the California Public Records Act (Chapter
7 3.5 (commencing with Section 6250) of Division 7 of Title 1 of
8 the Government Code).

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

12 15403. (a) In addition to fees required pursuant to this division,
13 a person requesting the initial issuance or renewal of an enhanced
14 driver's license, instruction permit, provisional license, or
15 identification card shall submit an additional nonrefundable
16 application fee with the application. The department shall set, by
17 regulation, the application fee in an amount not to exceed the
18 reasonable regulatory cost of issuing or renewing that license,
19 permit, or identification card, or fifty-five dollars (\$55), whichever
20 is less.

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

24 15404. (a) There is hereby established the Enhanced Driver's
25 License and Identification Card Subaccount in the Motor Vehicle
26 Account. Moneys in the subaccount shall, upon appropriation by
27 the Legislature, be expended by the department to implement this
28 chapter.

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

31 (c) This chapter is not intended to conflict with any other state
32 or federal law.

33 15405. The department shall submit an annual report in
34 compliance with Section 9795 of the Government Code to the
35 Assembly and Senate Committees on Judiciary, the Senate
36 Committee on Transportation and Housing, and the Assembly
37 Committee on Transportation. The report shall include, but not be
38 limited to, information on the number of enhanced driver's ~~licenses~~
39 *licenses, instruction permits, provisional licenses*, and identification
40 cards issued, the effect on wait times and traffic congestion at

1 points of entry, and whether or not there have been any security
2 or privacy breaches related to the use of the enhanced driver's
3 ~~licenses~~ *licenses, instruction permits, provisional licenses,* and
4 identification cards.

5 SEC. 3. The Legislature finds and declares that Section 2 of
6 this act, which adds Section 15402 to the Vehicle Code, imposes
7 a limitation on the public's right of access to the meetings of public
8 bodies or the writings of public officials and agencies within the
9 meaning of Section 3 of Article I of the California Constitution.
10 Pursuant to that constitutional provision, the Legislature makes
11 the following findings to demonstrate the interest protected by this
12 limitation and the need for protecting that interest:

13 The need to protect individual privacy from the public disclosure
14 of private information submitted by an applicant for an enhanced
15 driver's license, instruction permit, provisional license, or
16 identification card outweighs the interest in the public disclosure
17 of that information.

18 SEC. 4. No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution because
20 the only costs that may be incurred by a local agency or school
21 district will be incurred because this act creates a new crime or
22 infraction, eliminates a crime or infraction, or changes the penalty
23 for a crime or infraction, within the meaning of Section 17556 of
24 the Government Code, or changes the definition of a crime within
25 the meaning of Section 6 of Article XIII B of the California
26 Constitution.

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