

AMENDED IN ASSEMBLY AUGUST 28, 2015

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 *and to take other specified security measures* 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, ~~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, ~~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, license~~ 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.~~ *require the fees to be deposited into the Motor Vehicle Account.* The bill would, upon appropriation by the Legislature, require ~~the moneys in the subaccount~~ *those fees* 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.

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

4 (h) After the 9/11 attacks, the federal government enacted the
5 federal Western Hemisphere Travel Initiative (WHTI)(Public Law
6 110-53 and Public Law 108-458), to facilitate entry for United
7 States citizens and legitimate foreign visitors, while strengthening
8 United States border security, by requiring United States and
9 Canadian travelers to present a passport or other documents that
10 denote identity and citizenship when entering the United States.
11 The documentation requirements of the WHTI went into effect in
12 2007 for air travel into the United States and in 2009 for land and
13 sea travel.

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

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

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

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

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

1 CHAPTER 8. ENHANCED DRIVER'S LICENSE AND IDENTIFICATION
2 CARD
3

4 15400. The department may enter into a memorandum of
5 understanding with a federal agency for the purposes of obtaining
6 approval for the issuance of an enhanced driver's license,
7 ~~instruction permit~~, provisional license, or identification card that
8 is acceptable as proof of identity and citizenship pursuant to the
9 federal Western Hemisphere Travel Initiative (Public Law 110-53
10 and Public Law 108-458). *Prior to entering into any memorandum*
11 *of understanding, the department shall consult with appropriate*
12 *interested parties, including, but not limited to, business and*
13 *privacy groups, regarding the issues raised by implementation of*
14 *this chapter.*

15 15401. (a) Upon the request of an applicant, the department
16 may issue an initial enhanced driver's license, ~~instruction permit~~,
17 provisional license, or identification card to, or renew the enhanced
18 driver's license, ~~instruction permit~~, provisional license, or
19 identification card of, a person who satisfies all of the following:

- 20 (1) Is 16 years of age or older.
- 21 (2) Is a resident of this state.
- 22 (3) Is a citizen of the United States.

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

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

32 (3) The department shall provide a protective shield at the time
33 the enhanced driver's license, ~~instruction permit~~, provisional
34 license, or identification card is issued to the individual, and inform
35 the applicant in writing that the randomly assigned radio frequency
36 identification number can be read remotely without the holder's
37 knowledge, if the enhanced driver's license, ~~instruction permit~~,
38 provisional license, or identification card is not enclosed in the
39 protective shield.

1 (4) The applicant shall sign a declaration acknowledging his or
2 her understanding of radio frequency identification technology
3 and the purpose of the protective shield.

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

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

13 (1) Radio frequency identification technology that will contain
14 only a randomly assigned number that shall be encrypted if agreed
15 to by the United States Department of Homeland Security, and
16 shall not contain any other personal data, biometric information,
17 or number other than the randomly assigned number. *The enhanced*
18 *driver's license, provisional license, or identification card shall*
19 *include reasonable security measures to protect the privacy of*
20 *California residents, including reasonable safeguards to protect*
21 *against unauthorized disclosure of data about California residents.*
22 *If the enhanced driver's license, provisional license, or*
23 *identification card includes a radio frequency identification chip,*
24 *or similar technology, the department shall ensure that the*
25 *technology is encrypted or otherwise secure from unauthorized*
26 *data access.*

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

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

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

37 (2) An employer shall not discharge an employee or otherwise
38 discriminate or retaliate against an employee who refuses to apply
39 for, or use, an enhanced driver's license, ~~instruction permit~~,
40 provisional license, or identification card.

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

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

13 15402. (a) An applicant applying for an initial enhanced
14 driver's license, ~~instruction permit~~, provisional license, or
15 identification card, ~~or renewing an enhanced driver's license,~~
16 ~~instruction permit, provisional license, or identification card,~~ shall
17 have his or her photograph and signature captured or reproduced
18 by the department at the time of ~~application or renewal.~~ *application.*

19 (b) The photograph and signature shall only be available to the
20 United States Customs and Border Protection database or as
21 required by the United States Department of Homeland Security
22 for purposes of facilitating the purpose of the federal Western
23 Hemisphere Travel Initiative (Public Law 110-53 and Public Law
24 108-458).

25 (c) Except as provided in subdivision (b), the department shall
26 not disclose the person's photograph or signature, or copies of a
27 digital image of any document required pursuant to this chapter.
28 All laws related to the privacy or security of a driver's license,
29 ~~instruction permit~~, provisional license, or identification document,
30 or a similar document, or regulating the use, access, or sharing of
31 information, apply to enhanced driver's licenses, ~~instruction~~
32 ~~permits~~, provisional licenses, and identification cards.

33 (d) (1) The department shall examine and verify the
34 genuineness, regularity, and legality of an application and proof
35 submitted to the department for an initial issuance ~~or renewal~~ of
36 an enhanced driver's license, ~~instruction permit~~, provisional license,
37 or identification card.

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

1 (3) The department shall deny an application ~~or renewal~~ of an
2 enhanced driver's license, ~~instruction permit~~, provisional license,
3 or identification card if the department is not satisfied with the
4 genuineness, regularity, and legality of the application or
5 supporting documentation or the truth of any statement contained
6 in the application or supporting documentation, or for any other
7 reason authorized by law.

8 ~~(4) An applicant may, pursuant to Article 3 (commencing with~~
9 ~~Section 14100) of Chapter 3, appeal the department's denial of an~~
10 ~~application for the issuance or renewal of an enhanced driver's~~
11 ~~license, instruction permit, provisional license, or identification~~
12 ~~card.~~

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

15 (f) Notwithstanding subdivision (e), and except as required by
16 other law, in the case of the denial of an application for the issuance
17 ~~or renewal~~ of an enhanced driver's license, ~~instruction permit~~,
18 provisional license, or identification card, the department shall
19 retain the photograph of the applicant and the reason for denial for
20 not less than one year, unless fraud is suspected, in which case the
21 applicant's photograph and the reason for denial shall be retained
22 for not less than 10 years.

23 (g) The photograph, signature, copies, and digital image of
24 documents required pursuant to this section are exempt from public
25 disclosure pursuant to the California Public Records Act (Chapter
26 3.5 (commencing with Section 6250) of Division 7 of Title 1 of
27 the Government Code).

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

31 15403. (a) In addition to fees required pursuant to this division,
32 a person requesting the initial issuance or renewal of an enhanced
33 driver's license, ~~instruction permit~~, provisional license, or
34 identification card shall submit an additional nonrefundable
35 application fee with the application. The department shall set, by
36 regulation, the application fee in an amount not to exceed the
37 reasonable regulatory cost of issuing or renewing that ~~license;~~
38 ~~permit, license~~ or identification card, or fifty-five dollars (\$55),
39 whichever is less.

1 (b) Fees submitted shall be deposited into the ~~Enhanced Driver's~~
 2 ~~License and Identification Card Subaccount~~ established pursuant
 3 ~~to Section 15404. Motor Vehicle Account, to be available, upon~~
 4 ~~appropriation by the Legislature, to implement this chapter.~~

5 15404. ~~(a) There is hereby established the Enhanced Driver's~~
 6 ~~License and Identification Card Subaccount in the Motor Vehicle~~
 7 ~~Account. Moneys in the subaccount shall, upon appropriation by~~
 8 ~~the Legislature, be expended by the department to implement this~~
 9 ~~chapter.~~

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

12 ~~(c) This chapter is not intended to conflict with any other state~~
 13 ~~or federal law.~~

14 15405:

15 15404. The department shall submit an annual report in
 16 compliance with Section 9795 of the Government Code to the
 17 Assembly and Senate Committees on Judiciary, the Senate
 18 Committee on Transportation and Housing, and the Assembly
 19 Committee on Transportation. The report shall include, but not be
 20 limited to, information on the number of enhanced driver's licenses,
 21 ~~instruction permits~~, provisional licenses, and identification cards
 22 issued, the effect on wait times and traffic congestion at points of
 23 entry, and whether or not there have been any security or privacy
 24 breaches related to the use of the enhanced driver's licenses,
 25 ~~instruction permits~~, provisional licenses, and identification cards.
 26 *Information from the federal government that is required to be*
 27 *reported pursuant to this section need only be reported to the extent*
 28 *the information is received from the federal government.*

29 SEC. 3. The Legislature finds and declares that Section 2 of
 30 this act, which adds Section 15402 to the Vehicle Code, imposes
 31 a limitation on the public's right of access to the meetings of public
 32 bodies or the writings of public officials and agencies within the
 33 meaning of Section 3 of Article I of the California Constitution.
 34 Pursuant to that constitutional provision, the Legislature makes
 35 the following findings to demonstrate the interest protected by this
 36 limitation and the need for protecting that interest:

37 The need to protect individual privacy from the public disclosure
 38 of private information submitted by an applicant for an enhanced
 39 driver's license, ~~instruction permit~~, provisional license, or

1 identification card outweighs the interest in the public disclosure
2 of that information.

3 SEC. 4. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the penalty
8 for a crime or infraction, within the meaning of Section 17556 of
9 the Government Code, or changes the definition of a crime within
10 the meaning of Section 6 of Article XIII B of the California
11 Constitution.