

HOUSE BILL REPORT

HB 2433

As Reported by House Committee On: Transportation

Title: An act relating to a facial recognition matching system for drivers' licenses, permits, and identicards.

Brief Description: Authorizing the implementation of a facial recognition matching system for drivers' licenses, permits, and identicards.

Sponsors: Representatives Clibborn, Armstrong, Liias, Rodne, Maxwell, Moeller, Hurst and Ormsby; by request of Department of Licensing.

Brief History:

Committee Activity:

Transportation: 1/25/12, 2/1/12, 2/6/12, 2/7/12 [DPS].

Brief Summary of Substitute Bill

- Allows the Department of Licensing to implement a facial recognition matching system for driver's licenses, permits, and identicards.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 21 members: Representatives Clibborn, Chair; Billig, Vice Chair; Liias, Vice Chair; Armstrong, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Angel, Finn, Fitzgibbon, Hansen, Jinkins, Johnson, Klippert, Ladenburg, McCune, Moeller, Moscoso, Reykdal, Ryu, Takko, Upthegrove and Zeiger.

Minority Report: Do not pass. Signed by 8 members: Representatives Asay, Eddy, Kristiansen, Morris, Overstreet, Rivers, Rodne and Shea.

Staff: Alison Hellberg (786-7152).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Current law requires the Department of Licensing (Department) to implement a highly accurate biometric matching system that is compliant with standards established by the American Association of Motor Vehicle Administrators (AAMVA) within two years after Washington implements provisions of the federal Real ID Act.

The biometric matching system may only be used to verify the identity of an applicant for renewal or issuance of a duplicate license or identicard. When the system is established, the Department must allow every person applying for an original, renewal, or duplicate driver's license or identicard the option of submitting a biometric identifier. A fee of up to \$2 may be charged to add a biometric identifier to a driver's license or identicard. The project requires a full review by the Information Services Board using the criteria for the projects of the highest visibility and risk.

An applicant must be informed of:

- all ways in which the biometric identifier may be used;
- all parties to whom the identifier may be disclosed and the conditions of disclosure;
- the expected error rates for the biometric matching system which shall be regularly updated as the technology changes or empirical data is collected; and
- the potential consequences of those errors.

The Department must adopt rules to allow applicants to verify the accuracy of the system at the time that biometric information is submitted. All biometric information must be stored with appropriate safeguards. The Department may not disclose biometric information to the public or any governmental entity except when authorized by court order.

Current law also requires the Department to develop procedures to handle instances in which the biometric matching system fails to verify the identity of an applicant for a renewal or duplicate driver's license or identicard. These procedures must allow an applicant to prove identity without using a biometric identifier. A person who has voluntarily submitted a biometric identifier may choose to discontinue participation in the program at any time. When the person discontinues participation, any previously collected biometric information must be destroyed.

The Department received federal funds for a driver's license and identicard biometric matching system pilot program. The pilot program was implemented in 2009. The Enhanced Driver License program also uses facial recognition technology to verify identity.

Facial recognition matching systems use a mathematical template based on the photograph of the applicant and compare the template against templates of photos currently in the system. The system then identifies potential template matches for review by a Department staff person.

Summary of Substitute Bill:

A "facial recognition matching system" is defined as a system that compares the biometric template derived from an image of an applicant or holder of a driver's license, permit, or

identocard with the biometric templates derived from the images in the Department's negative file. The term "biometric matching system" is replaced with the term "facial recognition matching system" throughout the statute.

The Department may implement a facial recognition matching system (system) for all driver's licenses, permits, and identicards. Any system selected by the Department must only be used to verify the identity of an applicant for, or holder of, a driver's license, permit, or identocard to determine whether the person has been issued identification under a different name or names.

The results from the system are not available for public inspection and copying and may only be disclosed pursuant to a valid subpoena, warrant, or court order; or to a federal government agency if specifically required under federal law. In addition, the Department may disclose the results to a government agency, including a court or law enforcement agency, for use in carrying out its functions if the Department has determined that person has committed certain prohibited practices and this determination has been confirmed by a hearings examiner.

These prohibited practices are to:

- display or possess a fictitious or fraudulently altered driver's license or identocard;
- lend a driver's license or identocard to any other person or knowingly permit its use by another;
- display or represent as one's own any driver's license or identocard not issued to him or her;
- willfully refuse to surrender to the Department upon its lawful demand any driver's license or identocard which has been suspended, revoked, or canceled;
- use a false or fictitious name in an application for a driver's license or identocard, or to knowingly make a false statement, or to knowingly conceal a material fact or otherwise commit a fraud in an application;
- permit any unlawful use of a driver's license or identocard issued to him or her;
- sell or deliver a stolen driver's license or identocard; or
- manufacture, sell, or deliver a forged, fictitious, counterfeit, fraudulently altered, or unlawfully issued driver's license or identocard, or to manufacture, sell, or deliver a blank driver's license or identocard except under the direction of the Department.

The Department must post notices at driver licensing offices, make written information available at offices, and post information on the agency website that addresses:

- how the system works;
- all ways in which the Department may use the results;
- how an investigation based on results from the system would be conducted; and
- a person's right to appeal any determinations made.

The Office of the Chief Information Officer is required to develop appropriate security standards for the Department's use of the system, subject to approval and oversight by the Technology Services Board. The Department must report to the Governor and the Legislature by October 1 of each year regarding the number of investigations initiated by the Department based on results from the system and final outcomes of those investigations.

The requirement that the system be compliant with standards established by the AAMVA is modified so that any subsequent changes to the AAMVA standards would need to be adopted by the Department in rule.

The requirement that the Department implement a biometric matching system within two years of implementing the provisions of the Real ID Act is removed. Language allowing a person to discontinue participation in the program is removed. The requirement that the project be reviewed by the Information Services Board is removed. The authority for the Department to charge an applicant a \$2 fee for submitting a biometric identifier is repealed.

Substitute Bill Compared to Original Bill:

The authorization for use of the system is modified so that it may be used only to verify the identity of an applicant or holder of a license, permit, or identicaid to determine whether the person has been issued identification under a different name or names.

Disclosure requirements are added. The Department must post notices at driver licensing offices, make written information available at offices, and post information on the agency website that address:

- how the system works;
- all ways in which the Department may use results from the system;
- how an investigation based on results from the system would be conducted; and
- a person's right to appeal any determinations made.

The situations in which results from the system may be disclosed are modified. The results:

- are not available for public inspection and copying;
- may only be disclosed pursuant to a valid subpoena, warrant, or court order;
- may only be disclosed to a federal government agency if specifically required under federal law; and
- may be disclosed by the Department to a government agency, including a court or law enforcement agency, for use in carrying out its functions if the Department has determined that person has committed certain prohibited practices and this determination has been confirmed by a hearings examiner.

The Office of the Chief Information Officer is required to develop appropriate security standards for the Department's use of the system, subject to approval and oversight by the Technology Services Board. The Department must report to the Governor and the Legislature by October 1 of each year regarding the number of investigations initiated by the Department based on results from the system and final outcomes of those investigations.

The requirement in current law that the system must be compliant with standards established by the AAMVA is modified so that any subsequent changes to the AAMVA standards would need to be adopted by the Department in rule.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This is a simple bill and it is unbelievable that the state is not already doing this. It is an important tool in preventing identity theft. Law enforcement needs to know the identities of the people with whom they come into contact. In a recent triple homicide situation, the suspect had three identifications under different names. The state must be able to verify who a person is.

Identity theft has significant societal and public safety impacts. A driver's license is used as the primary form of identification in many situations and the Department needs to provide some assurance that a person is who he says he is. Thirty-one other states use some form of a facial recognition matching system. Seven other states use fingerprints. The Department cannot think of a situation where a person needs more than one license under different names.

(Opposed) None.

Persons Testifying: Representative Clibborn, prime sponsor; Brian Wurts, Washington Council of Police and Sheriffs; and Alan Haight, Department of Licensing.

Persons Signed In To Testify But Not Testifying: None.