

# HOUSE BILL REPORT

## ESSB 6150

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### As Reported by House Committee On: Transportation

**Title:** An act relating to supporting the driver's license, permit, and identicard system, including the administration of a facial recognition matching system.

**Brief Description:** Addressing the driver's license, permit, and identicard system, including the administration of a facial recognition matching system.

**Sponsors:** Senate Committee on Transportation (originally sponsored by Senators Haugen, King, Eide, Hobbs, Shin and Chase; by request of Department of Licensing).

#### **Brief History:**

##### **Committee Activity:**

Transportation: 2/20/12, 2/21/12 [DPA].

#### **Brief Summary of Engrossed Substitute Bill (As Amended by Committee)**

- Allows the Department of Licensing to implement a facial recognition matching system for driver's licenses, permits, and identicards.
- Changes the renewal period from five years to six years for driver's licenses, motorcycle endorsements, and identicards.
- Increases fees for driver's licenses, identicards, commercial driver's licenses, instruction permits, original license examinations, duplicate licenses, and DUI hearings.
- Provides that a driver's license issued to a person under the age of 21 expires on the person's twenty-first birthdate.

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### HOUSE COMMITTEE ON TRANSPORTATION

**Majority Report:** Do pass as amended. Signed by 15 members: Representatives Clibborn, Chair; Billig, Vice Chair; Liias, Vice Chair; Eddy, Finn, Fitzgibbon, Hansen, Jinkins, Ladenburg, Moeller, Morris, Moscoso, Reykdal, Takko and Upthegrove.

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*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.*

**Minority Report:** Do not pass. Signed by 12 members: Representatives Armstrong, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Angel, Asay, Johnson, Klippert, McCune, Overstreet, Rivers, Rodne, Shea and Zeiger.

**Staff:** Alison Hellberg (786-7152).

**Background:**

Biometric Matching System.

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.

### Driver Services.

The Department issues driver's licenses, endorsements, and identicards that are valid for up to five years. The fees associated with various driver services are as follows:

- a driver's license issued for five years is \$25 or, if issued for a period other than five years, is \$5 per year;
- a commercial driver's license issued for five years is \$61 or, if issued for a period other than five years, is \$12.20 per year;
- an identicard issued for up to five years is \$20 unless the applicant receives public assistance, in which case the cost is equal to the actual cost to produce the identicard;
- an initial motorcycle endorsement is \$12;
- a motorcycle endorsement renewal issued for five years is \$25 or, if issued for a period other than five years, is \$5 per year;
- an instruction permit is \$20;
- an original license examination is \$20;
- a duplicate license is \$15; and
- a DUI hearing is \$200.

The Department has the authority to provide a method to distinguish the driver's license of a person who is under the age of 21 from the driver's license of a person who is 21 years of age or older. Currently, the Department issues vertical-format licenses for drivers under the age of 21. Drivers over the age of 21 are issued a standard horizontal-format license.

Commercial drivers carrying certain hazardous materials must obtain a hazardous materials endorsement. This requires a complete background check through the federal Transportation Security Administration (TSA) and successful passage of a hazardous materials knowledge test.

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### **Summary of Amended Bill:**

#### Facial Recognition Matching System.

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 identicard 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 identicard 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 identicard;
- lend a driver's license or identicard to any other person or knowingly permit its use by another;
- display or represent as one's own any driver's license or identicard not issued to him or her;
- willfully refuse to surrender to the Department upon its lawful demand any driver's license or identicard which has been suspended, revoked, or canceled;
- use a false or fictitious name in an application for a driver's license or identicard, 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 identicard issued to him or her;
- sell or deliver a stolen driver's license or identicard; or
- manufacture, sell, or deliver a forged, fictitious, counterfeit, fraudulently altered, or unlawfully issued driver's license or identicard, or to manufacture, sell, or deliver a blank driver's license or identicard 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 numbers of:

- investigations initiated based on results from the matching system;
- determinations made that a person has committed a prohibited practice related to license fraud after the completion of an investigation;
- determinations that were confirmed and those that were overturned by a hearings examiner;
- cases where a person declined a hearing or did not attend a scheduled hearing; and
- determinations that were referred to law enforcement.

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.

#### Driver Services.

Beginning July 1, 2013, the renewal period for driver's licenses, commercial driver's licenses, motorcycle endorsements, and identicards is increased from five years to six years. In order to evenly distribute, as much as possible, the annual renewal rate, the Department may issue or renew licenses, endorsements, or identicards for a period other than five years from October 1, 2012, to June 30, 2013, and for a period other than six years after June 30, 2013.

The expiration date of a commercial driver's license with a hazardous materials endorsement may be a period other than six years in order to match validation from the TSA. If a hazardous materials endorsement is added to the license subsequent to its issuance, the Department may adjust the expiration date of the license.

A driver's license issued to a person under the age of 21 expires on the person's twenty-first birthdate.

The initial motorcycle endorsement fee is changed to reflect the issuance over a six-year period instead of five years, but the per-year cost remains the same as is currently collected (\$2 per year). The motorcycle endorsement renewal fee is also changed to reflect the issuance over a six-year period, but the per-year cost remains the same as is currently collected (\$5 per year).

Driver services fees are increased as follows:

<b>Driver Service Fees</b>	<b>Current Fee</b>	<b>Proposed Fee (October 2012 - June 2013)</b>	<b>Proposed Fee (after July 2013)</b>
Driver's License – Original and Renewal	\$25	\$45 (5-year)	\$54 (6-year)
Identicard – Original and Renewal	\$20	\$45 (5-year)	\$54 (6-year)
CDL – Original and Renewal	\$61	\$85 (5-year)	\$102 (6-year)
Instruction Permit – Original and Renewal	\$20	\$35	\$35
Original License Examination	\$20	\$35	\$35
Duplicate License	\$15	\$20	\$20
DUI Hearings Conducted	\$200	\$375	\$375

**Amended Bill Compared to Engrossed Substitute Bill:**

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

Public notice 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 on 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.

Restrictions on the disclosure of results from the system are modified. The results are not available for public inspection and copying. They may only be disclosed pursuant to a valid subpoena, warrant, or court order and may only be disclosed to a federal government agency if specifically required under federal law. The Department may disclose the results to a government agency, including a court or law enforcement agency, if the Department has determined that the 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 the appropriate security standards for 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 numbers of: investigations initiated based on results from the matching system; determinations made that a person has committed a prohibited practice related to license fraud after the completion of an investigation; determinations that were confirmed and those that were overturned by a hearings examiner; cases where a person declined a hearing or did not attend a scheduled hearing; and determinations that were referred to law enforcement.

Additional fees are increased. The fee for instruction permits and renewals is increased from \$20 to \$25. The fee for original driver's license exams is increased from \$20 to \$35. The fee for a duplicate license is increased from \$15 to \$20. The fee for DUI hearings is increased from \$200 to \$375.

A driver's license issued to a person under the age of 21 expires on the person's twenty-first birthdate.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 4 through 12, relating to expiration dates for licenses, endorsements, and identicards and fees, which take effect October 1, 2012.

**Staff Summary of Public Testimony:**

(In support) The system performs a critical public safety function. It ensures that when a person is pulled over by the police or attempting to obtain services, it is possible to determine if that person is who the person says he or she is. The process that the customer sees will not change. No additional database will be created. The system uses a mathematical formula to compare a photo to other photos in the database. Any "matches" are looked over by a human. The system does not do anything on its own. It is just a tool.

Retailers have been involved with the Attorney General's efforts to address identity theft and see the facial recognition component of this bill as an important tool. It is important for

retailers to know that the customer they are dealing with is the right person. This is also a police officer safety issue. Officers need a reasonable guaranty that the person they are looking at is who he says he is.

(With concerns) While the American Civil Liberties Union appreciates being brought into the conversation with the Department on this bill, there are still privacy concerns. The bill does not include an accuracy threshold, notice to the public on error rates, or adequate security standards. This is a "one to many" system which is less accurate and less useful than a "one to one" system. The bill should contain an actual numeric standard of false positives, better security standards, and reporting on a metric that addresses accuracy. It is important to see if this system is worth the state's money.

(Opposed) Good is not likely to come with using this program. Government is increasingly becoming bossy and snoopy. A favorite technique of certain authoritative governments was to take measurements of various body parts in order to develop racial theories that led to genocide.

**Persons Testifying:** (In support) Tony Sermonti, Department of Licensing; Mark Johnson, Washington Retail Association; and Lee Reaves, Council of Police and Sheriffs.

(With concerns) Shankar Narayan, American Civil Liberties Union of Washington.

(Opposed) Michael Brunson.

**Persons Signed In To Testify But Not Testifying:** None.