

HOUSE BILL REPORT

SSB 5152

As Passed House:

April 5, 2021

Title: An act relating to enhancing data stewardship and privacy protections for vehicle and driver data by clarifying the allowable uses of personal or identity information, prescribing penalties for data misuse, and codifying existing data contract practices.

Brief Description: Enhancing data stewardship and privacy protections for vehicle and driver data.

Sponsors: Senate Committee on Transportation (originally sponsored by Senators Nguyen, Rivers, Carlyle, Das, Kuderer, Muzzall, Saldaña and Wilson, C.; by request of Department of Licensing).

Brief History:

Committee Activity:

Transportation: 3/16/21, 3/29/21 [DP].

Floor Activity:

Passed House: 4/5/21, 76-22.

Brief Summary of Substitute Bill

- Requires the Department of Licensing to enter into a contract with an entity authorized to receive personal or identity information that must include limitations for the use of this information, requirements that the data recipient allow regular use audits and undergo regular data security audits, and provisions governing redisclosure of this information.
- Establishes a civil penalty for the unauthorized disclosure or use of personal or identity information of up to \$20,000 per incident.
- Expands government access to personal and identity information for any request related to the carrying out of governmental functions, except for requests that target Washington residents solely on the basis of race, religion, immigration, or citizenship status, or national or ethnic origin.

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

- Expands access to driving abstract information to transportation network companies, as well as to state agencies and scientific research organizations conducting research.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass. Signed by 28 members: Representatives Fey, Chair; Wylie, 1st Vice Chair; Bronoske, 2nd Vice Chair; Ramos, 2nd Vice Chair; Barkis, Ranking Minority Member; Eslick, Assistant Ranking Minority Member; Robertson, Assistant Ranking Minority Member; Volz, Assistant Ranking Minority Member; Berry, Chapman, Dent, Duerr, Entenman, Goehner, Griffey, Klicker, Lovick, McCaslin, Orcutt, Paul, Ramel, Riccelli, Slatter, Sutherland, Taylor, Valdez, Walsh and Wicks.

Staff: Jennifer Harris (786-7143).

Background:

Personal Information.

State and federal law specify when, to whom, and for what purpose the Department of Licensing (DOL) may release personal information obtained through vehicle or vessel registration or during the driver's license application or renewal process.

In the context of information held by the DOL in vehicle and vessel records, "personal information" is defined as information that identifies an individual, including an individual's photograph, Social Security number, driver identification number, name, address (excluding five-digit zip code), telephone number, or medical or disability information. An individual's photograph, Social Security number, and any medical or disability-related information is considered highly restricted personal information.

Vehicle and Vessel Records.

For personal information associated with vehicle or vessel registration, information disclosure is permitted under state law (excluding highly restricted personal information), for limited purposes, to the following recipients: vehicle or vessel manufacturers and the manufacturers of vehicle components; government agencies of the United States or Canada, or any political subdivision of either country; insurance or insurance support organizations; commercial parking companies; an authorized agent or contractor of the DOL; any business regularly making loans to finance the purchase of motor vehicles or vessels; and companies operating toll facilities.

Government agencies of the United States or Canada, or any political subdivision of either

country, may only use registration information for the enforcement of motor vehicle or traffic laws or programs related to traffic safety, or for laws governing vessels, vessel operation, or vessel safety programs. Local government entities may also use registration information to provide notice to owners of towed and impounded vehicles. Law enforcement entities may use registration information to locate the owner or otherwise address a hazard created by a vessel. Any government agency may use the names and addresses of registered owners to notify them of outstanding parking violations.

The DOL is required under state law to disclose the mailing addresses and residence addresses of the registered owner of a motor vehicle or vessel in response to requests for disclosure from courts, law enforcement agencies, or government entities with enforcement, investigative, or taxing authority, for use in the normal course of conducting their business.

The unauthorized disclosure of information from vehicle or vessel records, the use of a false representation to obtain vehicle or vessel records from the DOL, the use of information obtained from vehicle or vessel records other than for a purpose stated in the request or the disclosure agreement with the DOL, or the sale or other distribution of vehicle or vessel owner names or addresses to another person not disclosed in the request or disclosure agreement is a gross misdemeanor punishable by a fine of no more than \$10,000 or by imprisonment in a county jail for less than a year, or both.

Driver's License and Driving Records.

The DOL is permitted under state law to disclose all photographs taken by the DOL as part of the driver's license or identocard application or renewal process to official government enforcement agencies to assist in investigations of suspected criminal activity or for the purpose of verifying identity when a law enforcement officer is authorized to request identification from an individual.

The DOL may provide an abstract of a person's driving record to the individual named in the abstract, and for certain specified purposes, to employers or prospective employers; volunteer organizations; transit authorities; insurance carriers; alcohol and drug assessment and treatment agencies; city attorneys, county prosecuting attorneys, and named individuals' attorneys of record; state colleges, universities, agencies, or units of local government; and the Superintendent of Public Instruction. Release of this information by these entities to third parties is prohibited. A negligent violation of restrictions on the use of a driving record abstract is a gross misdemeanor and an intentional violation is a class C felony.

The DOL maintains a case record on every motor vehicle driver that includes information on each driver and that shows all convictions and findings of traffic infractions certified by the courts, including each accident reported that relates to a driver and that includes a statement of the accident's cause and whether or not the accident resulted in a fatality. These records may be used by the DOL, Washington State Patrol, Washington Traffic Safety Commission, and police officers.

Summary of Bill:

Personal and Identity Information.

Information or records containing person or identity information obtained by the DOL for driver and vehicle records is private and confidential, subject to exceptions under federal and state law. "Identity information" includes federal tax identification number, employer identification number, residential and mailing address (excluding zip codes), telephone number, registered and legal vehicle owner name, gender, place of birth, voter information status, and selective service information.

Data recipients and subrecipients authorized to receive personal or identity information originating from the DOL have an affirmative obligation to take all responsible actions necessary to prevent the unauthorized disclosure and misuse of personal and identity information. The DOL may require audit or investigation of any entity receiving personal or identity information that originated from the DOL. Prior to providing data services that include the release of personal or identity information, the DOL must enter into a contract with the entity authorized to receive the information that includes:

1. limitations and restrictions for the use of personal or identity information;
2. a requirement that the data recipient undergo regular data security audits;
3. a provision that all costs of the audits are not the responsibility of the DOL;
4. provisions governing redisclosure of personal or identity information; and
5. other privacy, compliance, and contractual requirements that may be set by rule by the DOL to protect personal or identity information.

The unauthorized disclosure or use of personal or identity information is subject to a civil penalty of up to \$20,000 per incident, adjusted annually based on the consumer price index, payable to the DOL Technology Improvement and Data Management Account. If personal or identity information provided by the DOL is used for an unauthorized purpose, the data recipient and any subrecipient responsible for the unauthorized use may be denied further access to this information for up to five years.

The unauthorized disclosure of personal or identity information, the use of a false representation to obtain personal or identity information from the DOL, the use of personal or identity information obtained from the DOL other than for a purpose stated in the request or the disclosure agreement with the DOL, or the sale or other distribution of personal or identity information to another person not disclosed in the request or disclosure agreement is a gross misdemeanor punishable by a fine of no more than \$10,000 or by imprisonment in a county jail for less than a year, or both.

Vehicle and Vessel Records.

The DOL may furnish lists of registered and legal owners of motor vehicles and vessels to government agencies, including courts and law enforcement agencies, or a private person

acting on behalf of a federal, state, or local agency, or of Canada, except for requests that target Washington residents solely on the basis of race, religion, immigration, or citizenship status, or national or ethnic origin. Both a mailing address and a residence address on vehicle or vessel records, when different, are disclosable in response to requests from courts, law enforcement agencies, or government entities for use in the normal course of conducting their business.

Driver's License and Driving Records.

The DOL may provide employers or their agents with a three-year insurance carrier driving record of existing employees only for the purpose of the record being shared with the employer's insurance carrier for underwriting. An employer may not provide employees' full driving records to its insurance carrier. An abstract of a full driving record may only be provided to an employer or prospective employer or its agents for purposes unrelated to driving when it is required by federal or state law, or when the employee will be handling heavy equipment or machinery.

A driving record abstract may be provided to federal and state agencies, or their agents, in carrying out their functions. A driving record abstract may also be provided to transportation network companies or their agents acting on behalf of the named individual for purposes related to driving as a condition of being a contracted driver. The DOL may furnish driving record data to state agencies and bona fide scientific research organizations, and may require review and approval by an institutional review board.

State agencies and scientific research professional associations are exempt from paying fees related to reviewing records and providing driving record abstracts, except that the DOL may charge a cost-recovery fee for the cost of providing the data. The Superintendent of Public Instruction is exempt from paying fees related to the review of driving records abstracts for bus drivers.

The DOL may enter into contractual agreements for the review of driving records of existing employees for changes to records during specified periods of time with employers or their agents for existing employees; transit authorities or their agents for current van pool drivers; insurance carriers or their agents for current policy holders; state colleges, universities, or agencies, or units of local governments or their agents; the Office of the Superintendent of Public Instruction for school bus drivers; and transportation network companies or their agents. The DOL must establish a fee for this service that prevents a net revenue loss to the state for providing it, which must be deposited in the Highway Safety Fund.

Employers may provide driving records to regulatory bodies, as defined by the DOL by rule, such as the United States Department of Transportation and the Federal Motor Carrier Safety Administration, and to contracted motor carrier consultants, for the purposes of ensuring driver compliance and risk management. Employers may also provide a three-year

driving record to their insurance carrier for underwriting purposes.

Appropriation: None.

Fiscal Note: Available.

Effective Date: 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 bill is agency-request legislation that builds on the work that the DOL has been doing to be a good data steward. It builds on the work that the House of Representatives and Senate transportation committees have done to support data protection and privacy concerns related to the data maintained by the DOL.

The bill has three components. State law currently mandates inconsistent protections for vehicle versus driver data. The bill makes these protections consistent across third-party contracts for data access with the DOL by strengthening driver data protections. The bill also establishes a \$20,000 offense when a third-party contract with DOL is related to the misuse of DOL data. Otherwise, there is very little recourse in place if a third party violates a contract. Finally, the bill streamlines allowable uses of vehicle and driver data to align the law in this area with current practice.

(Opposed) None.

Persons Testifying: Senator Nguyen, prime sponsor; and Beau Perschbacher, Department of Licensing.

Persons Signed In To Testify But Not Testifying: None.