
**Technology, Energy &
Communications Committee**

HB 2729

Brief Description: Addressing the reading and handling of certain identification documents.

Sponsors: Representatives Eddy, Pedersen, Appleton, Lantz, Williams, Upthegrove, Santos, Simpson, Hasegawa, Ericks, Ormsby and Springer.

Brief Summary of Bill

- Limits the circumstances under which a governmental or non-governmental entity may electronically read a driver's license or identicard.
- Restricts how a non-governmental entity may store, sell, or share personal information collected from a driver's license or identicard.
- Creates exemptions from the Public Records Act for: (1) information required in connection with an application for a driver's license or identicard; and (2) personally identifying information collected for border crossing.

Hearing Date: 1/30/08

Staff: Kara Durbin (786-7133).

Background:

Western Hemisphere Travel Initiative: In April 2005 the Departments of State and Homeland Security announced the Western Hemisphere Travel Initiative (Initiative), which will require individuals entering or re-entering the United States to present a passport or other federally-approved identification or proof-of-citizenship document.

The identification requirements of the Initiative for persons entering or re-entering the United States by land or sea take effect January 31, 2008.

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.

Washington's Enhanced Driver's License: In 2007 the Legislature enacted ESHB 1289, which authorized the Department of Licensing (DOL) to issue a voluntary enhanced driver's license or identicard (EDL/ID) to all applicants who, in addition to meeting all other driver's license or identicard requirements, provide the DOL with proof of U.S. citizenship, identity, and state residency. The EDL/ID uses Radio Frequency Identification (RFID) technology, a wireless technology that stores and retrieves data remotely. An RFID chip is embedded in each EDL/ID and contains a unique reference number. At the border crossing station, an RFID reader uses electromagnetic waves to energize the tag and collect this reference number. The reader converts the radio waves reflected back from the RFID tag into digital information and transmits it to the Customs and Border Protection network, which is an encrypted, secure network. The reference number is compared to the Customs and Border Protection's records to verify that an individual's identity matches the information printed on the front of their EDL/ID card.

Collection of Personal Information from an Identification Document: There are no state laws that prohibit or restrict a non-governmental entity from using or distributing personal information gained through an EDL/ID or other identification card or document.

Public Records Act: Each state and local agency is required under the Public Records Act to make all public records available for public inspection and copying unless the record is exempted from disclosure. Examples of records exempted in statute include:

- personal information on students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients;
- information revealing the identity of persons who are witnesses to or victims of crime;
- test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination;
- financial and valuable trade information; and
- credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers supplied to an agency for the purpose of electronic transfer of funds.

Summary of Bill:

Non-governmental Entities: A non-governmental entity may only electronically read an individual's driver's license or identicard for two purposes: (1) to verify the authenticity of the document; or (2) to verify the individual's age or identity.

A business may only verify a consumer's age for two purposes: (1) to provide an age-restricted good or service; or (2) to provide a service for which there is a discount based on the consumer's age.

A business may only verify a consumer's identity and the accuracy of personal information submitted by a consumer when the consumer pays with a method other than cash or returns an item.

A non-government entity may not store, sell, or share personal information collected from a driver's license or an identicard without the written consent of the individual unless:

- (1) the personal information is collected by a business when the consumer pays with a method other than cash; and

(2) the information is being stored, sold, or shared only for the purposes of preventing fraud by pursuing legal remedies against, or recovering on a debt or security interest against, the individual.

Any personal information collected from the driver's license or identicard must be destroyed within 30 days.

A business may not deny a consumer a good or service if the consumer exercises his or her right under this bill to: (1) not allow his or her driver's license to be read electronically for other purposes; or (2) not allow the storage, sale, or sharing of personal information.

Governmental Entities: A governmental entity may only electronically read an individual's driver's license or identicard if:

- (1) the individual knowingly makes the driver's license or identicard available to the governmental agency;
- (2) the governmental agency lawfully seizes the driver's license or identicard; or
- (3) the purpose is to provide emergency assistance when an individual is unconscious or otherwise unable to make the driver's license or identicard available.

Civil Remedies: An individual whose personal information is read, stored, shared, sold, or otherwise used in violation of this bill may bring a civil action to recover actual damages, or \$1,000, whichever is greater, and equitable relief, if available. The court shall award a prevailing individual reasonable costs and attorney's fees. The court may allow up to three times the damage award if the violation is found to be willful or knowing.

Consumer Protection Act: A violation of this bill is a violation of the Consumer Protection Act.

Public Records Act Exemptions: A public records exemption is created for documents and related materials used to establish identity, age, a residential address, a social security number, or other personal information required in connection with an application for a driver's license or identicard.

The existing public records exemption for personally identifying information collected through transponders or other technologies for payment of tolls is extended to include personally identifying information collected to facilitate border crossing. Personally identifying information may be released for the purposes of the United States Customs and Border Protection enforcement.

Appropriation: None.

Fiscal Note: Not requested.

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