

SUBJECT: Driver's license identification system using biometric identifiers

COMMITTEE: Defense Affairs and State-Federal Relations — committee substitute recommended

VOTE: 5 ayes — Corte, Campbell, Berman, Delisi, Seaman

1 nay — Mabry

3 absent — Merritt, P. Moreno, Noriega

SENATE VOTE: On final passage, April 25 — voice vote (Estes recorded nay)

WITNESSES: For — None

Against — Scott Henson, ACLU of Texas; Ana Yanez-Correa, Texas LULAC; Wayne Krause, Texas Civil Rights Project; Armando Villareal, United Farm Workers of America and AFL-CIO; (*Registered, but did not testify:*) Hector Ortiz, William C. Velazques Institute

On — Tommy Davis and Kim Smith, Texas Department of Public Safety

BACKGROUND: Biometric identifiers include fingerprints, retina or iris scans, and hand and face geometry.

Since the late 1960s, under Transportation Code, sec. 521.142, an applicant for a Texas driver's license or identification card has had to submit a thumbprint when receiving or renewing the card. Transportation Code, sec. 730.010 allows the Department of Public Safety (DPS) to use the image only in connection with the issuance of the license and to disclose the image only if expressly authorized by law. The prints are not embedded in the licenses but are stored in a DPS database. In 1995, DPS began storing the prints digitally, instead of using ink on paper.

The 77th Legislature enacted HB 678 by McCall, which prohibits the capture of a biometric identifier for a commercial purpose unless the person giving the identifier consents. People and governmental bodies who possess

biometric identifiers may not sell or otherwise disclose them unless the person consents to the disclosure; the disclosure completes a financial transaction requested or authorized by the person; the disclosure is required or permitted by a state or federal law; or the disclosure is made by or to a law enforcement agency for a law enforcement purpose.

Under federal and state law, applicants for driver's licenses and commercial driver's licenses, but not for personal identification cards, must submit their social security numbers as part of the application. Transportation Code, sec. 521.044 restricts the use and disclosure of the social security numbers of people holding Texas driver's licenses to uses for child-support enforcement and the U.S. Selective Service System.

Transportation Code, sec. 730.007 lists the circumstances under which personal information from motor-vehicle records can be disclosed.

DIGEST:

CSSB 945 would require DPS to establish an identification system for driver's license applicants using biometric identification. The Transportation Code no longer would specify that applications for licenses and identification cards must include thumbprints, but instead would require license applicants to submit any biometric identifier specified by DPS.

DPS would have to authenticate the biometric identifiers of applicants for personal identification certificates, driver's licenses, and commercial driver's licenses so that an applicant was issued only one original license, permit, or certificate; did not obtain a duplicate fraudulently; and did not commit other fraud in connection with the application. Biometric identification would mean any automated method of identifying a person based on a physiological characteristic, including facial recognition, thumbprinting, and fingerprinting.

DPS could not require applicants for personal identification certificates to provide their social security numbers. Applications for driver's licenses would have to include the applicant's social security number.

The Transportation Code restrictions that allow DPS to use images of people's thumbs or fingers only in connection with the issuance of a license, permit, or certificate would be changed to allow DPS to use these images to authenticate identity.

Applicants for commercial driver's licenses would have to meet the statutory requirements for general driver's licenses, instead of only having to meet any requirements prescribed by DPS.

Driver's license fee increase. CSSB 945 would raise the fee for obtaining and renewing a driver's license from \$24 to \$30. The fee for renewing a Class M (motorcycle) license or for renewing a license that included authorization to operate a motorcycle would be raised from \$32 to \$38, and applicants for Class M licenses or additional authorization to operate a motorcycle would have to pay an additional \$15 fee.

Before September 1, 2005, DPS would have to deposit \$6 of each fee collected for a general license issuance or renewal or a Class M issuance or renewal to a separate account in general revenue. Money in that account could be appropriated to DPS only to support reengineering of the driver's license system. After August 31, 2005, DPS would have to deposit \$2 of each fee to a separate account in general revenue that could be appropriated to DPS only to replace, maintain, or support the driver's license system, and \$4 of each fee to the state highway fund.

CSSB 945 would repeal current requirements that applicants for additional authorization to operate a motorcycle pay a \$15 fee and that licensees holding Class A, B, or C driver's licenses who want to include an authorization to operate a motorcycle or moped pay an additional \$8 fee.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSSB 945 would help combat fraudulent driver's licenses, bolster homeland security, and give DPS the funds to update its aging driver's license computer system, while continuing to protect the privacy of licensees and to safeguard Texans' private information. These proposals grow out of a request by the Governor's Task Force on Homeland Security that DPS look into improving the integrity of Texas driver's licenses.

Using biometric identifiers as part of the license process would help increase confidence in the accuracy of the cards and make them more difficult to forge. Current law requires license applicants to state their full name and place and date of birth and to verify that information by presenting proof of identity to

DPS. However, DPS has no way to verify many of these documents, such as birth certificates, that are used as proof of identity. This can allow people to obtain licenses under false names or multiple licenses by presenting to DPS fraudulent identity documents.

CSSB 945 would solve this problem by allowing DPS to capture a biometric identifier when a person applied for a license or ID card and to use that identifier to ensure that the person did not obtain licenses under false names. This would help prevent identity theft and would help ensure the accurate identification of drivers by DPS and others, such as merchants who use the cards to verify identity. The benefits of the state having a reliable, accurate database that law enforcement could use to authenticate identity in combating terrorism far outweigh unfounded concerns about privacy.

CSSB 945 would not expand current law broadly. DPS already collects applicants' thumbprints, which are biometric identifiers. The bill simply would direct DPS to set up its identification system based on biometrics, provide funding to do so, and allow DPS to use another biometric identifier, such as facial recognition, in the future if it became feasible. CSSB 945 would allow Texas to be poised to use the most up-to-date, effective technology.

Other states use biometric identifiers in connection with driver's licenses without violating drivers' privacy or creating serious technical problems. Businesses and the military use identification cards with biometric identifiers and have reported no abuse or privacy problems.

The bill would allow thumbprints to be used only to authenticate identity. Other safeguards would prevent abuse or sharing of biometric information. Transportation Code, sec. 730.007 limits the disclosure of personal information collected in connection with motor-vehicle records to disclosure for use by government agencies carrying out their functions. The statute allows disclosure in conjunction with a court proceeding or court order. This means that biometrics would be disclosed only when the thumbprints and photographs now collected may be disclosed — for example, for legitimate law enforcement purposes or under grand jury subpoena. Concerns about the use of biometrics for some type of mass identification program using cameras in public places are unfounded, because these situations would not meet the requirements for disclosure.

Authorizing DPS to release social security numbers to law enforcement agencies for investigations would not expand current law significantly, because these purposes clearly fall within the current authorizations listed in Transportation Code sec. 730.007. However, the statute requires law enforcement agencies to submit certain proof or to have a grand jury subpoena issued before the information can be released. CSSB 945 would eliminate these unnecessary, time-consuming bureaucratic hoops. The statutes would continue to protect social security numbers and people's privacy while meeting public safety needs by restricting release to investigative purposes only. This would be especially helpful in combating identity theft, when law enforcement often must move quickly.

CSSB 945 would impose no new requirements in regard to collecting social security numbers and would not force anyone to obtain a number. Federal law, the Texas Family Code, and DPS administrative rules require the inclusion of social security numbers on driver's license applications, but they also allow a person who does not have a social security number to obtain a license by submitting a letter from the Social Security Administration indicating that the person is not eligible for a social security number. CSSB 945 simply would place the requirement for a social security number into the list of other requirements in Transportation Code, sec. 521.142. This would allow an applicant to identify easily the requirements for obtaining a driver's license. However, the bill would prohibit the use of social security numbers on personal ID cards to comply with a federal requirement restricting the use of the numbers for this purpose.

The fee increases proposed by CSSB 945 would raise at least \$31 million during fiscal 2004-05 to replace failing hardware and to rewrite outdated driver's license programs. The current system, circa 1970, is so antiquated that equipment is failing and software programs are outdated. Without updating, the current system could become unusable if it fails. Updating also is necessary to allow the collection and retrieval of biometric information. After the new system has been developed, CSSB 945 would provide for its maintenance and would direct some additional money to the state highway fund. The license renewal fee increases in CSSB 945 would be modest and affordable — amounting to only \$1 per year — since licenses need to be renewed only every six years.

The bill would clean up the statutes by repealing some conflicting provisions requiring additional fees for some motorcycle licenses, while leaving in place the current provisions about motorcycle licenses that would take precedence over the provisions being repealed.

**OPPONENTS
SAY:**

Using biometric identifiers for the driver's license program would erode Texans' individual privacy and unwisely would expand the government's reach and power. This would be another step in government's efforts to gather more and more information on private citizens.

Biometric identifiers can contain a greater amount of personal information than the photographs used on current licenses. Analysis of biometric information can go beyond identifying a person and can reveal highly sensitive information, such as a person's genetic makeup or medical history, that could be shared with government or private entities. CSSB 945 would allow DPS to collect any biometric identifier, vastly expanding the agency's current authority to collect thumbprints. Also, the thumbprints now collected are not in a searchable database like the one that this bill would establish.

CSSB 945 would expand the government's power by allowing biometric information on law-abiding people to be compiled into a massive database of all licensed drivers. If this database were connected with the expanding network of cameras watching people's everyday movements, the government could invade Texans' privacy by tracking their everyday movements.

Using biometrics on driver's licenses would not make the licenses fraud-proof. A different person's biometric identifier could be placed on a license, just as a photograph of one person can be placed on a license with another person's name and address. Also, using biometric identifiers on Texas driver's licenses could be problematic because this technology is untested for a large population and often fails to identify people properly. Law enforcement use of the DPS biometric database could lead to increasing harassment of innocent people.

The provision allowing the open-ended use of biometric data to authenticate identity would increase dramatically the allowable reasons for releasing drivers' personal information. This provision is so broad that it could include any conceivable purpose, including law enforcement fishing expeditions.

Using biometrics on driver's licenses would not help combat terrorism. Most of the September 11 terrorists were in the United States legally, and most obtained their driver's licenses legally.

Provisions in CSSB 945 that specifically would allow the release of social security numbers for law enforcement purposes would make the release too easy. Current law allowing them to be released under certain circumstances, even though it can include law enforcement investigation, is more appropriate and better protects privacy, because it requires law enforcement to establish certain proofs before social security numbers can be released.

The proposed fee increases are unwarranted, given that biometric technology is unproven for use with a large population like that of Texas drivers. The fee increases would hit low-income drivers hardest.

NOTES:

The committee substitute added the requirement that after August 31, 2005, DPS deposit \$4 of the proposed fee increases to the state highway fund. It also removed authorization for licensees' social security numbers to be used by the secretary of state for jury wheel or voter registration purposes. The bill was recommitted on a point of order on May 24, and the recommitted version of the committee substitute is unchanged.

The fiscal note for CSSB 945 estimates that the proposed fee increases would generate \$31.3 million during fiscal 2004-05 for the new dedicated account for reengineering the driver's license system. This estimate excludes revenue related to motorcycle licenses. Beginning in fiscal 2006, the fee increases would generate about \$5.8 million per year for the driver's license system maintenance account and \$11.5 million per year for the state highway fund. The fiscal note projects the addition of 28 full-time employees.