An act to add Sections 12800.8, 12800.85, and 12800.9 to the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 661, as introduced, Dunn. Driver's licenses: identification cards: biometric identifiers.

(1) Under existing law, every application for an original or renewal of a driver's license or identification card is required to contain, among other things, a legible print of the thumb or finger of the applicant.

This bill would require the Department of Motor Vehicles to create a biometric identifier, as defined, from an applicant's thumbprint or fingerprint and perform a process of authentication, as defined, in order to ensure that each individual is issued only one driver's license or identification card. The bill would prohibit the department from providing any information collected pursuant to these provisions to any 3rd party. The bill would impose various duties on the department with regards to adopting and implement procedures for restricting access to information collected pursuant to these provisions, maintaining records of requests for access, and posting notices regarding these procedures. The bill would authorize the department to produce information collected under these provisions pursuant to a court ordered subpoena or summons. The bill would authorize the department to transmit the information collected under these provisions to 3rd parties with whom the department has a bona fide business relationship in order to carry out the purposes of these provisions if certain specified conditions are met. The bill would impose various duties on the 3rd party to adopt procedures restricting access to biometric identifiers. Because a
violation of this provision would constitute an infraction under existing provisions of law, this bill would impose a state-mandated local program by expanding the definition of a crime. The bill would impose various civil penalties on any person who negligently or willfully violates these provisions, and would authorize any person aggrieved by a violation of these provisions to seek civil remedies. The bill would require the Bureau of State Audits to monitor the use of biometric data to ensure compliance with these provisions and submit an evaluation and recommendations to the Judiciary Committees of the Legislature.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.


The people of the State of California do enact as follows:

SEC. 1. Section 12800.8 is added to the Vehicle Code, to read:
12800.8. The department shall create a biometric identifier derived from the print of the thumb or finger of the applicant, collected pursuant to subdivision (c) of Section 12800, and authenticate it to ensure that each individual is issued only one driver’s license.

SEC. 2. Section 12800.85 is added to the Vehicle Code, to read:
12800.85. As used in this article the following terms have the following meanings:
(a) “Biometric” means a unique digital code created from a thumb point or fingerprint.
(b) “Authentication” means the automated comparison of one biometric identifier to all other biometric identifiers held by the department.

SEC. 3. Section 12800.9 is added to the Vehicle Code, to read:
12800.9. (a) The fingerprint or thumbprint collected pursuant to subdivision (c) of Section 12800 and subdivision (c) of Section 13000 and the biometric authentication performed...
pursuant to Sections 12800.8 and 13003.5, including any data or
cipher derived therefrom, shall solely be used to ensure that
each individual is issued only one driver’s license or identification
card.

(b) The department shall engage in biometric authentication
only if all of the following conditions are met:

(1) Notwithstanding any other provision of law, except as
otherwise provided in subdivisions (c) and (d), the department
shall not sell, transmit, exchange, match, or otherwise provide to
third parties including, but not limited to, federal, state, or local
governmental agencies the thumbprint or fingerprint collected
pursuant to subdivision (c) of Section 12800 or subdivision (c) of
Section 13000 or the biometric identifiers, or data containing the
biometric identifiers, in the department’s possession.

(2) The department shall adopt and implement procedures
restricting access to biometric identifiers, and these procedures
shall be designed to secure that data from tampering and
unauthorized access. These procedures shall include
administrative, technical, and physical safeguards to protect
against any reasonably anticipated threats or hazards to the privacy
of the information, and unauthorized uses or disclosures of the
information. The department shall reassess on an annual basis the
reasonableness of their protections as well as the protections
employed by third parties with whom they contract in light of
technological developments and make reasonable improvements
or contractual changes. Biometric data must be protected from
unauthorized use by encryption that is at least 128 bits in strength.

(3) The department shall maintain a record of each request for
access to the biometric identifiers including the name of the
individual and the agency or entity seeking access, the reason for
which the access was sought, an explanation of whether the request
was granted and what, if any, data was provided.

(4) Only thumbprints and fingerprints collected and biometric
identifiers created by the department under this section shall be
authenticated with the biometric identifiers held by the
department.

(5) At each location where thumbprints or fingerprints are
being gathered, the department shall prominently post notices
explaining that the prints are being gathered to create a data base
for the department to verify identity and that third parties including
federal, state, and local governmental agencies may have access to the data with a court order. The notices shall also state that before biometric identifiers will be sold, transmitted, exchanged, matched, or otherwise provided to third parties by the department, the individual must give prior written consent.

(6) The department shall establish a process whereby an individual may access his or her records and correct errors in any biometric-related data and records compiled in conjunction with a biometric authentication system.

(7) After the thumbprint or fingerprint is converted to a biometric identifier for authentication, the department shall destroy the paper or electronically obtained thumbprint or fingerprint and any copies.

(c) Nothing in subdivision (b) shall prohibit any of the following:

(1) The authority of the department to authenticate an individual biometric identifier in a civil case pursuant to a court ordered subpoena or summons or upon the request of a law enforcement official pursuant to a warrant issued in relation to any ongoing investigation. The biometric identifier shall not be used for a purpose other than that for which it was sought. A civil subpoena or summons shall be subject to an order protecting the confidentiality of the biometric identifier.

(2) The authority of an individual to provide affirmative written consent to have his or her biometric identifier transmitted or furnished to a third party for an express purpose.

(d) Nothing in this section shall be construed to prevent biometric identifiers from being transmitted electronically through or to third parties with whom the department has a bona fide business relationship solely to ensure that each applicant is issued only one driver’s license or identification card, provided the following conditions are met:

(1) The transmission is for no other purpose.

(2) The third party adopts procedures restricting access to biometric identifiers, and these procedures are designed to secure that data from tampering and unauthorized access. These procedures shall include administrative, technical, and physical safeguards to protect against any reasonably anticipated threats or hazards to the privacy of the information, and unauthorized uses or disclosures of the information. Biometric data must be protected
from unauthorized use by encryption that is at least 128 bits in strength.

(3) The third party does not transmit the biometric identifier to any other person or agency, except to the extent required to complete the biometric authentication.

(4) All biometric data is encrypted.

(e) Any third party including, but not limited to, a federal, state, or local governmental agency that obtains a biometric identifier or biometric data shall not use those biometric identifiers or data or any information derived from them for any purpose other than for which it was originally sought without the prior written consent of the individual. Third parties, including, but not limited to, federal, state, or local governmental agencies shall destroy the biometric identifiers and data after completion of the purpose for which it was obtained.

(f) Any person who is found to have willfully violated this section shall be subject to a civil penalty of twenty-five thousand dollars ($25,000) per violation. Any person who is found to have negligently violated this section shall be subject to a civil penalty of ten thousand dollars ($10,000) per violation. The civil penalty may be assessed and recovered in a civil action in the name of the people of the State of California by the Attorney General or any person aggrieved by the conduct. If the Attorney General brings this action, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered.

(g) In addition to civil penalties and any other civil remedy that may be provided by law, any person aggrieved by a violation of this section may seek and obtain injunctive relief and recover damages, and the court shall award reasonable attorney’s fees and court costs to a prevailing plaintiff.

(h) The Bureau of State Audits shall monitor the use of biometric data to ensure compliance with this section and the effectiveness of this section in protecting consumers, and submit an annual report based on an audit of the privacy and security of biometric identifiers and data bases, containing an evaluation and recommendations to the Judiciary Committees of the Legislature on or before January 1, 2004.

SEC. 4. Section 13003.5 is added to the Vehicle Code, to read:

13003.5. (a) The department shall create a biometric identifier derived from the applicant’s thumbprint or fingerprint,
collected pursuant to subdivision (c) of Section 13000, and
authenticate it to ensure that each individual is issued only one
identification card.
(b) The department shall comply with Section 12008.9 in the
issuance and reissuance of identification cards.
SEC. 5. No reimbursement is required by this act pursuant to
Section 6 of Article XIII B of the California Constitution because
the only costs that may be incurred by a local agency or school
district will be incurred because this act creates a new crime or
infraction, eliminates a crime or infraction, or changes the penalty
for a crime or infraction, within the meaning of Section 17556 of
the Government Code, or changes the definition of a crime within
the meaning of Section 6 of Article XIII B of the California
Constitution.