

**Introduced by Senator Dunn**

February 23, 2001

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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.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 12800.8 is added to the Vehicle Code,  
2 to read:

3 12800.8. The department shall create a biometric identifier  
4 derived from the print of the thumb or finger of the applicant,  
5 collected pursuant to subdivision (c) of Section 12800, and  
6 authenticate it to ensure that each individual is issued only one  
7 driver’s license.

8 SEC. 2. Section 12800.85 is added to the Vehicle Code, to  
9 read:

10 12800.85. As used in this article the following terms have the  
11 following meanings:

12 (a) “Biometric” means a unique digital code created from a  
13 thumb point or fingerprint.

14 (b) “Authentication” means the automated comparison of one  
15 biometric identifier to all other biometric identifiers held by the  
16 department.

17 SEC. 3. Section 12800.9 is added to the Vehicle Code, to read:

18 12800.9. (a) The fingerprint or thumbprint collected  
19 pursuant to subdivision (c) of Section 12800 and subdivision (c)  
20 of Section 13000 and the biometric authentication performed



1 pursuant to Sections 12800.8 and 13003.5, including any data or  
2 encryption derived therefrom, shall solely be used to ensure that  
3 each individual is issued only one driver's license or identification  
4 card.

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

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

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

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

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

37 (5) At each location where thumbprints or fingerprints are  
38 being gathered, the department shall prominently post notices  
39 explaining that the prints are being gathered to create a data base  
40 for the department to verify identity and that third parties including



1 federal, state, and local governmental agencies may have access to  
2 the data with a court order. The notices shall also state that before  
3 biometric identifiers will be sold, transmitted, exchanged,  
4 matched, or otherwise provided to third parties by the department,  
5 the individual must give prior written consent.

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

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

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

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

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

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

33 (1) The transmission is for no other purpose.

34 (2) The third party adopts procedures restricting access to  
35 biometric identifiers, and these procedures are designed to secure  
36 that data from tampering and unauthorized access. These  
37 procedures shall include administrative, technical, and physical  
38 safeguards to protect against any reasonably anticipated threats or  
39 hazards to the privacy of the information, and unauthorized uses  
40 or disclosures of the information. Biometric data must be protected



1 from unauthorized use by encryption that is at least 128 bits in  
2 strength.

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

6 (4) All biometric data is encrypted.

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

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

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

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

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

39 13003.5. (a) The department shall create a biometric  
40 identifier derived from the applicant's thumbprint or fingerprint,



1 collected pursuant to subdivision (c) of Section 13000, and  
2 authenticate it to ensure that each individual is issued only one  
3 identification card.

4 (b) The department shall comply with Section 12008.9 in the  
5 issuance and reissuance of identification cards.

6 SEC. 5. No reimbursement is required by this act pursuant to  
7 Section 6 of Article XIII B of the California Constitution because  
8 the only costs that may be incurred by a local agency or school  
9 district will be incurred because this act creates a new crime or  
10 infraction, eliminates a crime or infraction, or changes the penalty  
11 for a crime or infraction, within the meaning of Section 17556 of  
12 the Government Code, or changes the definition of a crime within  
13 the meaning of Section 6 of Article XIII B of the California  
14 Constitution.

