

SUBJECT: Financial institutions' use of electronic information on driver's licenses

COMMITTEE: Law Enforcement — favorable, without amendment

VOTE: 4 ayes — Driver, Y. Davis, Hegar, Keel

1 nay — Hupp

1 present not voting — Burnam

1 absent — Garza

SENATE VOTE: On final passage, April 25 — voice vote

WITNESSES: *(On House companion bill, HB 2773:)*
For — Karen Neeley, Independent Bankers Association of Texas

Against — None

BACKGROUND: Transportation Code, sec. 521.126 prohibits the Department of Public Safety (DPS) from including on the magnetic strip on driver's licenses, commercial driver's licenses, and identification cards any information except what is printed on the license and a physical description of the licensee. DPS must ensure that the information is used only for law enforcement or governmental purposes. Unauthorized use of the information is a Class A misdemeanor, punishable by up to one year in jail and/or a maximum fine of \$4,000.

Alcoholic Beverage Code, sec. 109.61 allows a person to obtain electronically readable information on driver's licenses and identification cards to comply with the code or with a commission rule, including for the purpose of preventing someone from committing an offense under the code, such as checking compliance with minimum age requirements for purchasing alcohol. The information cannot be marketed in any manner.

DIGEST: SB 1445 would make it a Class A misdemeanor to obtain or use electronically readable information from a driver's license, commercial driver's license, or identification card or to compile or maintain a database of electronically

readable information derived from the licenses or cards. It would repeal the requirement that DPS ensure that the information is used only for law enforcement purposes. The prohibitions against obtaining and compiling information would not apply to:

- DPS officers or employees who obtain or use the information for law enforcement or government purposes;
- peace officers acting in their official capacity;
- a deputy licensed by the Texas Parks and Wildlife Department who is issuing a license, stamp, tag, permit, or similar item through use of a point-of-sale system authorized by the Parks and Wildlife Code; or
- people obtaining the information as authorized by the Alcoholic Beverage Code.

The prohibition against obtaining and using the electronically readable information on driver's licenses and identification cards would not apply to a financial institution that used the information only to identify a person. The prohibition against compiling and maintaining a database of electronically readable information would not apply to a financial institution if each licensee or card holder consented. Consent could be granted only by signing a separate document that explained the information that would be included in the compilation or database.

A person could not use the information derived from electronically readable information on driver's licenses and identification cards to engage in telephone solicitation to encourage someone to buy, rent, or invest in goods, property, or services.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

SB 1445 is necessary to enable Texas financial institutions to meet requirements imposed by a federal law that was enacted in the wake of the September 11, 2001, terrorist attacks on the World Trade Center and the Pentagon. The federal Patriot Act requires financial institutions to obtain certain information about their customers and to verify their identities. The purposes of these requirements include ensuring that people are not opening bank accounts under false names or shifting money among bank accounts and people to disguise terrorist activities.

To identify customers and verify their identities properly and efficiently, financial institutions need to be able to read the magnetic information on Texas driver's licenses and identification cards. Reading this information would not give the institutions any information they do not have already, because under current law, the magnetic strip can include nothing but what is printed on the license and a physical description of the licensee. However, electronically reading this information would allow an institution to discern whether a license or card was authentic and, therefore, to verify the identity of the license or card holder. Fake licenses and identification cards often have blank magnetic strips or strips that are not encrypted like those on authentic cards issued by DPS.

Other means of verifying customer's identity are impracticable or expensive. Customers do not carry with them or have easy access to documents such as utility receipts or school records that could verify their identity. Using commercial credit bureaus to verify identity would take time and increase costs to the financial institution or the customer.

In allowing financial institutions to compile databases about their customers, SB 1445 would not change any major public policy or allow the invasion of customers' privacy. Financial institutions already have databases of information about their customers. SB 1445 simply would allow them to compile the information electronically from driver's licenses instead of having to input it manually. The bill would protect people's privacy and would protect against financial institutions compiling the information into databases against the will of customers by requiring the written consent of every licensee whose information was included in a database.

The only other exceptions to the prohibitions against obtaining and compiling data from driver's licenses and identification cards would be for law enforcement or government purposes. Law enforcement officers could obtain the electronic information, as could people working to implement or enforce Parks and Wildlife and Alcoholic Beverage statutes.

It is not unprecedented for the state to allow nongovernmental entities to obtain the electronic information on driver's licenses. For example, the Alcoholic Beverage Code allows people to read the electronic information to prevent underage drinking.

SB 1445 would address concerns about the misuse of electronic information on driver's licenses and identification cards by making it a criminal offense to obtain or use the information or to compile or maintain a database derived from the information. Also, it would prohibit use of this type of information for telemarketing.

**OPPONENTS
SAY:**

The Legislature should not erode Texans' privacy by expanding the allowable uses of electronic driver's license information beyond government uses. Eroding the restrictions on access to this information could lead to increased use of the information for nongovernmental purposes, just as the uses of social security numbers for purposes outside of the Social Security Administration have expanded. Allowing one nongovernmental entity to use the information could lead to other entities being allowed access to the information, in violation of Texans' privacy rights. The Legislature should not alter the tradition of restricting access to this information.

Other, more acceptable means exist for financial institutions to meet the requirements of federal law. For example, the institutions could ask customers to bring receipts for utility service or could use commercial credit companies.

No one should be allowed to use government-gathered information from driver's licenses to compile databases. Databases can erode personal privacy and increase the power of commercial entities by increasing access to information. Customers of financial institutions might not understand fully the implications of allowing their electronic information to be compiled in a database, or they might feel that they have to consent in order to do business with the institution.

NOTES:

The companion bill, HB 2773 by Solomons, was considered in a public hearing by the House Law Enforcement Committee on April 7 and left pending.