Date of Hearing: June 29, 2015

ASSEMBLY COMMITTEE ON TRANSPORTATION
Jim Frazier, Chair
SB 249 (Hueso) – As Amended April 30, 2015

SENATE VOTE: 36-3

SUBJECT: Vehicles: enhanced driver's license.

SUMMARY: Allows the Department of Motor Vehicles (DMV) to issue enhanced driver's licenses (EDLs) that are acceptable at border crossings as proof of identity and citizenship. Specifically, **this bill**:

1) Makes findings and declarations regarding traffic congestion at California/Mexico border crossings and the federal government's endorsement of EDLs that allow for far faster processing of border crossers.

2) Allows DMV to enter into a memorandum of understanding (MOU) with a federal agency for the purposes of obtaining approval for the issuance of an EDL, instruction permit, provisional license, or identification card (all of these instruments, other than EDLs, are hereafter referred to as "related documents") that is acceptable as proof of identity and citizenship pursuant to the Western Hemisphere Travel Initiative (WHTI).

3) Allows DMV upon the request of an applicant, to issue an initial EDL or related document, or renew any of these documents, for a person who is 16 years of age or older and is a resident of California and a citizen of the United States.

4) Requires the applicant to: submit sufficient proof that meets the requirements of the WHTI to establish his or her identity, residency, and citizenship and certify under the penalty of perjury that the information he or she has submitted is true and correct to the best of his or her knowledge.

5) Requires DMV to inform an EDL applicant in writing that the information stored on the EDL's radio frequency identification (RFID) chip can be read remotely without the holder's knowledge. Further requires that the applicant sign a declaration acknowledging his or her understanding of RFID technology.

6) Requires DMV to include in the EDL or related document reasonable security measures to protect against unauthorized disclosure of personal information regarding the person who is the subject of the document.

7) Requires the EDL or related document to include RFID technology which will contain, if agreed to by the United States Department of Homeland Security, a randomly assigned identification number and a machine readable zone or barcode that can be electronically read by the cross border patrol.

8) Specifies that the EDL or related document shall not contain any personal data, biometric information, or any number other than the randomly assigned number and the information

gathered for the machine readable zone or barcode shall be limited to the information required by the WHTI.

9) Allows an EDL to be suspended, revoked, or restricted as are other driver's licenses under existing law.

10) Prohibits an employer from requiring an employee to apply for or use and EDL or identification card as a condition of employment and prohibits an employer from discharging or discriminating against an employee who refuses to apply for or use an EDL or identification card. Additionally permits a person who received adverse action by an employer associated with refusal to applying for an EDL to file a complaint with the Division of Labor Standards within the Department of Industrial Relations, as specified.

11) Requires an applicant applying for an initial EDL, or related document, to have his or her photograph and signature captured or reproduced by DMV at the time of application or renewal, requires DMV to review and approve the appropriate documents, and limits DMV's ability to provide an applicant's information to the appropriate federal agencies, as specified.

12) Requires DMV to deny an application or renewal of an EDL, or related document, if it does not satisfied certain requirements as specified, and allows an applicant to appeal DMV's denial of an application for the issuance or renewal of an EDL or related document.

13) Requires DMV to retain copies or digital images of documents provided by applicants for EDLs and related documents.

14) Requires DMV, after denying an application for an EDL or related document, to retain the photograph of the applicant and the reason for denial for not less than one year, unless fraud is suspected, in which case the applicant's photograph and the reason for denial must be retained for not less than 10 years.

15) Requires DMV to set the application fee in an amount not to exceed its regulatory cost of issuing or renewing an EDL or $55, whichever is less. Further requires revenues to be deposited into the Motor Vehicle Account (MVA), as specified, and be used to implement the EDL program.

16) Requires DMV to submit an annual report to the following committees: Assembly Transportation, Assembly Judiciary, Senate Transportation and Housing, and Senate Judiciary. The annual report will include data on (but not be limited to) the number of EDL's and information cards issued, the effect on wait times, traffic congestion at points of entry, and any identified security or privacy breaches related to the use of EDL's and identification cards.

EXISTING LAW:

1) Authorizes DMV to issue driver's licenses and identification cards.

2) Requires a person applying for a driver's license or identification card to provide certain documentation, including, but not limited to, a social security number, verification of birth date, and legal presence in the United States.

3) Requires DMV to issue a driver's license to an applicant who is ineligible for a social security number if the applicant can provide additional documentation, as specified. Further specifies that a driver's license issued to an applicant who is ineligible for a social security number cannot be used for identification purposes.

4) At the federal level, the Real ID Act of 2005 includes provisions to improve the security of driver's licenses and identification cards.

FISCAL EFFECT: According to the Assembly Appropriations Committee, in an analysis of an almost identical bill, SB 397 (Hueso) of 2013:

1) One-time costs special fund costs of around $4.5 million over two to five years, if the DMV exercises the authority to develop the EDL program. Start-up costs would include completing an MOU with the Department of Homeland Security; establishing secure, verifiable database connectivity; adopting regulations to require documentation to prove citizenship, identity and residency and the criteria for EDL denial. This would involve significant information technology programming and purchase of RFID readers and other equipment.

2) Ongoing costs to operate the program would likely be in the low millions of dollars for additional staff.

3) The above costs would be offset by EDL fee revenue, however no revenue would accrue until after DMV incurs most of the startup costs, thus the department would need to cover these costs through borrowing from internal funds or from programmatic efficiencies or reductions.

COMMENTS: Current state law does not allow DMV to implement a process to issue EDL's to applicants within the state. Travelers that currently cross the U.S.-Mexico border must use other documentation to present proof of identify such as a passport which has minimal impact on expediting a traveler's processing time across the border. The author's office states that the intent of SB 249 is to reduce travel and processing times and strengthen security at border crossings as a means of stimulating cross-border business activities.

According to the Department of U.S. Customs and Border Protection (CBP), an EDL is "the standard document issued by a state or (Canadian) province that has been enhanced in process, technology and security to denote identity and citizenship for purposes of entering into the United States at the land and sea port of entry." CBP goes on to explain, "When the EDL is presented by a United States or Canadian citizen traveler, no other documentation is required for purposes of proving identity and citizenship."

An EDL may be used in "ready lanes," which are vehicle lanes operated by CBP at border crossings exclusively for travelers who possess RFID-enabled travel documents (which may also include U.S. passport cards and so-called "trusted travel documents"). These documents allow information contained in a wireless device or "tag" to be read from a distance at ready lanes, similar to those contained in car keys and employee identifications. This technology eliminates the need to key-in traveler information and translates into faster processing than manual queries.

The genesis of the EDL was the need for heightened security measures after the 9/11 terrorist attacks. Congress passed the Intelligence Reform and Terrorism Prevention Act of 2004 requiring U.S. and Canadian travelers to present a passport or other document that denotes identity and citizenship when entering the U.S. The WHTI went into effect on June 1, 2009, for land and sea travel into the U.S. The goal of WHTI is to facilitate entry for U.S. citizens and legitimate foreign visitors, while increasing U.S. border security. The states of Washington, New York, Michigan and Vermont as well as four Canadian provinces have all implemented EDLs.

The author introduced SB 249 because DMV currently lacks the authority to issue EDLs. The author notes SB 249 will provide DMV with the authority to issue EDLs and eliminate the need to manually key-in traveler's information at ports of entry – resulting in faster processing times and a decrease in wait times for cross-border traffic. Thus, with the ability to expedite crossing the U.S.-Mexico border using "ready lanes" and RFID technology, travelers may see the option of using an EDL as a viable alternative to meet their traveling needs.

Writing in support of SB 249, the San Diego-Tijuana Smart Boarder Coalition asserts "EDL's will help decrease boarder wait times by at least 30 minutes and encourage people to travel from Mexico into California using CBP's Ready Lanes."

In opposition, the American Civil Liberties writes "It has long been understood that the federal government selected the most insecure RFID technology for WHTI-compliant documents like the EDL without the proper assessment of costs and benefits or attention to the significant and well-supported privacy and security concerns expressed by lawmakers, the electronics industry, security researchers, the public, and its own internal experts."

Double referral: This bill is will be referred to the Assembly Judiciary Committee should it pass out of this committee.

Previous legislation: SB 397 (Hueso) of 2013, an almost identical to SB 249, would authorize DMV to enter an MOU with the federal government to issue EDLs. SB 397 was held on the Assembly Appropriations Committee suspense file.

REGISTERED SUPPORT / OPPOSITION:

Support

Baja California, Mexico
California Chamber of Commerce
Calexico Chamber of Commerce
Casa Familiar
City of El Centro
City of San Diego
El Centro Chamber of Commerce and Visitor Bureau
Honorable Juan Vargas, Member of Congress
Honorable Mary Casillas Salas, Mayor, City of Chula Vista
Honorable Todd Gloria, Councilmember, City of San Diego
Imperial County Transportation Commission
Otay Mesa Chamber of Commerce
San Diego Association of Governments

San Diego Regional Chamber of Commerce
San Diego-Tijuana Smart Boarder Coalition

Opposition

American Civil Liberties Union of California
Consumer Watchdog
Eagle Forum of California
Electronic Frontier Foundation
Ella Baker Center for Human Rights
Privacy Rights Clearinghouse

Analysis Prepared by: Manny Leon / TRANS. / (916) 319-2093