

SUBJECT: Use of electronically readable personal ID information by election officials

COMMITTEE: Elections — favorable, without amendment

VOTE: 5 ayes — Denny, Bohac, Anchia, Anderson, J. Jones

0 nays

2 absent — Hughes, T. Smith

WITNESSES: For — Steve Scurlock, Independent Bankers Association of Texas;
(*Registered, but did not testify*: George Hammerlein, Harris County Tax Assessor-Collector; Suzy Woodford, Common Cause)

Against — None

On — (*Registered, but did not testify*: Ann McGeehan, Secretary of State's Office; Margaret Spinks, Texas Department of Public Safety)

BACKGROUND: The Texas Department of Public Safety (DPS) in 1995 initiated a new, digital driver's license design with a bar code and magnetic stripe on the back. The stripe contains information from the front of the license and a physical description of the licensee, specifically hair color and weight.

The 76th Legislature in 1999 added Transportation Code, sec. 521.126, restricting access to electronically readable information on driver's licenses, commercial driver's licenses, or DPS-issued identification cards to anyone except those using it for governmental or law enforcement purposes. An attorney general's opinion issued February 21, 2001 (JC-0337) determined that the magnetic stripe information may be used only by law enforcement and other governmental agency personnel acting in their official capacities. 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.

The Legislature in 2001 amended the Alcoholic Beverage Code to allow a person to obtain electronically readable information on driver's licenses and identification cards in order to comply with the code or with a commission rule – including to prevent someone from committing an

offense under the code, such as by checking compliance with minimum age requirements for purchasing alcohol. The legislation specified that the information could not be marketed in any manner.

In 2003, the 78th Legislature amended Transportation Code sec. 521.126 to facilitate compliance with the USA Patriot Act, which, among other things, is intended to prevent terrorist funding. That legislation allowed financial institutions to have access to or use the electronically readable information contained on a driver's license if the information is accessed and used only for purposes of identification of an individual. The bill deleted the restriction that DPS take necessary steps to ensure that the information was used only for law enforcement or governmental purposes. Instead, it specified the following governmental officials who could access data on driver's licenses:

- a DPS officer or employee who accesses or uses the information for law enforcement or government purposes;
- a peace officer, as defined by the Code of Criminal Procedure, acting in the officer's official capacity;
- a licensed deputy, as defined by the Parks and Wildlife Code, issuing a license, stamp, tag, permit, or other similar items; or
- a person authorized by the Alcoholic Beverage Code.

DIGEST:

HB 178 would amend Transportation Code sec. 521.126(d) to permit election officers to access electronically readable information from driver's licenses in order to determine a voter's identity. The bill also would amend the Election Code, ch. 63 to permit an election officer to access electronically readable information on a driver's license or DPS-issued personal identification card for proof of identification. The secretary of state would authorize any necessary implementation procedures.

The bill would take effect September 1, 2005.

**SUPPORTERS
SAY:**

HB 178 would help election officials process voter registration identification more expeditiously and accurately. Since the emergence of Texas driver's licenses with electronically readable information, it has been unclear at times whether such information was available to election officials for voter identification. Before 2003, some county clerks and elections administrators interpreted the Transportation Code's reference to use of this electronic data for governmental purposes to include identifying registered voters. Last session's bill aimed at complying with

the USA Patriot Act inadvertently excluded election officials from the list of governmental officials who could use the electronically readable information on driver's licenses. HB 178 specifically would place election officers among the governmental entities authorized to use this driver's license data, correcting an unintended error from last session.

With increased participation in early voting and general elections, registered voters frequently encounter long lines at polling places. HB 178 would help election officials process voter identification more efficiently – in about 20 seconds per voter – and allow lines to move more quickly.

Elections officials now have to key punch by hand certain identifying information, such as driver's license numbers or voter registration numbers. This creates considerable room for error, especially with pressure to move lines quickly and when many temporary election workers are not accustomed to using data entry systems regularly. HB 178 would ensure greater accuracy by eliminating the hand-punching of long identification numbers.

In the two previous sessions, the Legislature has included private entities in provisions allowing access to driver's license information, including establishments trying to stop underage drinking and financial institutions using the information only to identify people. It would be inconsistent now to question the authority of election officials to have the same electronic data, especially since most of it already is contained on voter registration applications.

This change would be appropriate at a time of such public emphasis on increased voter participation and with public pressure to process voters accurately.

**OPPONENTS
SAY:**

This bill would afford another government entity easy access to personal identification information on driver's licenses. Although driver's license information now is limited to what is on the face of the license, plus hair color and weight, HB 178 would widen the pool of governmental officials who have access to such information. The Legislature should approach expanded access to driver's license information with caution in an age of biometrics because the criteria could change for what is contained on the magnetic stripe. Counties could soon have election officials, who often

are temporary workers, in possession of otherwise private information that would be inappropriate and unnecessary for voter identification.

NOTES:

A related bill, SB 89 by Averitt, passed the Senate on March 17 on the Local and Uncontested Calendar and has been referred to the House Transportation Committee. It differs from HB 178 by amending only the Transportation Code and not Election Code, ch. 63.