

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 HOUSE BILL 2146

By: Ritze

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5 AS INTRODUCED

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7 An Act relating to motor vehicles; creating the
8 Oklahoma Identity Protection Act; amending Section 1,
9 Chapter 159, O.S.L. 2007 (47 O.S. Supp. 2008, Section
10 6-110.3), which relates to retrieval and deletion of
11 biometric data; directing the Department of Public
12 Safety to cease the collection, use and storage of
13 certain data; prohibiting the receipt of any product
14 capable of producing biometric comparisons; directing
15 removal of certain computer software; making certain
16 acts unlawful; providing penalties; expanding scope
17 of certain biometric data retrieval requirements;
18 providing procedures for destruction of biometric
19 data; granting discretion to the Department of Public
20 Safety to use certain software programs; providing
21 requirements and procedures for use of facial images;
22 directing the Department of Public Safety to
23 disconnect certain computer hardware; prohibiting
24 access of biometric data to law enforcement without a
court order; modifying definition; prohibiting the
collection or retention of computerized facial
images; directing retrieval of certain images;
providing procedures for the collection of facial
images; providing for the appointment of certain
persons to verify compliance; requiring completion of
certain compliance report; requiring publication of
report; directing the Department of Public Safety to
develop procedures for destroying photographs and
facial images; providing for the replacement of
facial images; directing the development of certain
procedures for updating and renewing driver licenses
and identification cards; providing for
noncodification; and providing an effective date.

1 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

2 SECTION 1. NEW LAW A new section of law not to be
3 codified in the Oklahoma Statutes reads as follows:

4 This act shall be known and may be cited as the "Oklahoma
5 Identity Protection Act".

6 SECTION 2. AMENDATORY Section 1, Chapter 159, O.S.L.
7 2007 (47 O.S. Supp. 2008, Section 6-110.3), is amended to read as
8 follows:

9 Section 6-110.3 A. 1. The Legislature finds that the
10 enactment into law by the United States Congress of the federal REAL
11 ID Act of 2005, Public Law Number 109-13, is inimical to the
12 security and well-being of the people of Oklahoma, will cause
13 approximately Eight Million Dollars (\$8,000,000.00) in added expense
14 and inconvenience to our state, and was adopted by the United States
15 Congress in violation of the principles of federalism contained in
16 the Tenth Amendment to the United States Constitution.

17 2. The State of Oklahoma shall not participate in the
18 implementation of the REAL ID Act of 2005. The Department of Public
19 Safety is hereby directed not to implement the provisions of the
20 REAL ID Act of 2005 and to report to the Governor and the
21 Legislature any attempt by agencies or agents of the United States
22 Department of Homeland Security to secure the implementation of the
23 REAL ID Act of 2005 through the operations of that or any other
24 state department.

1 B. No department or agency of the state charged with motor
2 vehicle registration or operation, the issuance or renewal of driver
3 licenses, or the issuance or renewal of any identification cards
4 shall collect, obtain, or retain any data in connection with
5 activities related to complying with the REAL ID Act of 2005.

6 C. The Department of Public Safety shall cease all biometric
7 data comparisons used in conjunction with motor vehicle registration
8 or operation, the issuance or renewal of driver licenses, or the
9 issuance or renewal of any identification cards and shall cease the
10 collection, storage and retention, comparisons, sharing or
11 disclosure of any biometric data, biometric sample or biometric
12 template. The Department of Public Safety is further prohibited
13 from using computer software components for the comparison of
14 biometric data, biometric sample or biometric template and shall be
15 prohibited from making such biometric data comparisons in the
16 future. The Department of Public Safety is prohibited from
17 submitting a request for quotation or request for information from
18 any vendor of driver license or identification cards and related
19 equipment or computer software where such quotations or information
20 would refer to any product capable of making biometric comparisons.

21 D. The Department is prohibited from receiving, for purposes of
22 testing or evaluation, any product capable of producing biometric
23 comparisons. At such time that the Department enters into any new,
24 renewed, or altered contract with any vendor relating to the

1 production of driver license or identification cards, the Department
2 shall immediately and permanently remove from the computer system of
3 the Department any computer software that could be used for
4 biometric comparison, even if such software had previously been made
5 inoperable. The Department shall be prohibited from making any
6 attempts in the future to reinstall, utilize, or replace such
7 computer software. The cost for removal of such software, if any,
8 shall be appropriated from the budget of the Department.

9 E. It shall be unlawful for any employee of the Department of
10 Public Safety to:

11 1. Attempt to reinstall computer software capable of producing
12 biometric comparisons, biometric comparisons on personal information
13 contained in the databases of the Department, or biometric
14 comparisons on individuals in a public setting;

15 2. Recover previously deleted personal data that has been
16 removed from the database of the Department in compliance with this
17 section;

18 3. Alter or change any facial image that is in compliance with
19 this section; or

20 4. Alter any hardware or computer software component so as to
21 acquire a photograph or computerized facial image resolution higher
22 than specified in subsection H of this section relating to maximum
23 pixel count of facial images.

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1 Any person who violates the provisions of this subsection shall,
2 upon conviction, be guilty of a misdemeanor punishable by
3 imprisonment in the county jail for not less than six (6) months,
4 and shall be fined no less than Ten Thousand Dollars (\$10,000.00).

5 F. Any biometric data, biometric sample or biometric template
6 previously collected, obtained, or retained in connection with motor
7 vehicle registration or operation, the issuance or renewal of driver
8 licenses, or the issuance or renewal of any identification cards by
9 any department or agency of this state charged with those
10 activities, including data contained in archival or back-up storage
11 databases of the Department of Public Safety or any third party
12 relating to those activities, shall be retrieved and permanently
13 deleted from any and all databases. ~~The provisions of this~~
14 ~~subsection shall not apply to any data collected, obtained or~~
15 ~~retained for a purpose other than complying with the REAL ID Act of~~
16 ~~2005~~ Upon the permanent destruction of such biometric data,
17 biometric sample or biometric template, any personal, nonbiometric
18 information shall be resubmitted to archival storage, back-up or
19 active databases. The Department shall completely destroy the
20 biometric data, biometric sample and biometric template, as defined
21 in subsection H of this section, within six (6) months of the
22 effective date of this act. However, the Department may have the
23 discretion to, within six (6) months of the effective date of this
24 act, employ the use of a computer software program to permanently

1 and irreversibly modify existing facial images previously collected
2 in archival, back-up or active databases. Upon installation of the
3 computer software program, all facial images in databases of the
4 Department shall consist of an uncompressed photographic resolution
5 where the width of the head is forty-eight (48) pixels or more of
6 resolution, which corresponds to a maximum full image width of
7 eighty-four (84) pixels and an image height of one hundred five
8 (105) pixels. There shall be no facial images of higher resolution
9 contained in any active database, archival or back-up databases of
10 the Department or of any third party that may be in possession of
11 archival or back-up data. In the event that the Department chooses
12 to permanently modify existing facial images but is technically
13 unable to complete such modifications during the six (6) month
14 period allowed, the Department may obtain an extension of time from
15 the committee of appropriate oversight provided, however, the
16 Department supplies written proof that the Department is unable to
17 complete such facial image modifications within the specified time.
18 The Department of Public Safety shall render inoperable, all
19 biometric computer software components and shall disconnect all
20 hardware used specifically for collecting finger images from any
21 computer system that is used in motor vehicle registration or
22 operation or for the issuance or renewal of driver licenses and
23 identification cards issued by the Department.

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1 D. G. No law enforcement agency of the State of Oklahoma or
2 federal government, other than the Department of Public Safety,
3 shall have access to any information defined as biometric data,
4 biometric sample or biometric template that may be contained in any
5 active, archival or back-up database in possession of the Department
6 or any third party, that by contract is in possession of the same,
7 without first obtaining a court order from a court of competent
8 jurisdiction. Each application for an order authorizing the access
9 to any information defined herein as biometric data, biometric
10 sample or biometric template, shall be made in writing upon oath or
11 affirmation to a court of competent jurisdiction. Each application
12 shall establish probable cause for belief that a named individual is
13 committing, has committed or is about to commit a particular
14 violation of law.

15 H. For purposes of this section, "biometric data", "biometric
16 sample", and " biometric template" ~~includes~~ include, but is not
17 limited to:

- 18 1. Facial feature pattern characteristics;
- 19 2. Computerized facial image or hard copy of the same that when
20 scanned by electronic means may be used to create a computerized
21 facial image that exceeds an uncompressed photographic resolution
22 where the width of the head is forty-nine (49) pixels or more of
23 resolution, which corresponds to a maximum full image width of

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1 eighty-five (85) pixels or more of resolution, and an image height
2 of one hundred six (106) pixels or more of resolution;

3 3. Voice data used for comparing live speech with a previously
4 created speech model of a person's voice;

5 ~~3.~~ 4. Iris recognition data containing color or texture
6 patterns or codes;

7 ~~4.~~ 5. Retinal scans, reading through the pupil to measure blood
8 vessels lining the retina;

9 ~~5.~~ 6. Behavior characteristics of a handwritten signature, such
10 as shape, speed, pressure, pen angle, or sequence;

11 ~~6.~~ 7. Fingerprints, palm prints, and other methods for
12 measuring or recording ridge pattern or fingertip characteristics;

13 ~~7.~~ 8. Keystroke dynamics, measuring pressure applied to key
14 pads;

15 ~~8.~~ 9. Hand geometry, measuring hand characteristics, including
16 the shape and length of fingers, in three (3) dimensions; and

17 ~~9.~~ 10. Deoxyribonucleic acid (DNA) and/or ribonucleic acid
18 (RNA).

19 I. No department or agency of the state charged with motor
20 vehicle registration or operation, the issuance or renewal of driver
21 licenses, or the issuance or renewal of any identification cards
22 shall collect, obtain, or retain any computerized facial image of an
23 individual in connection with the issuance or renewal of driver
24 licenses or identification cards that exceeds an uncompressed

1 photographic resolution where the width of the head is forty-eight
2 (48) pixels or more of resolution, which corresponds to a maximum
3 full image width of eighty-four (84) pixels and an image height of
4 one hundred five (105) pixels. The Department of Public Safety
5 shall make every attempt to retrieve any images of higher resolution
6 that have been shared with any person or entity, public or private,
7 including data submitted for archive or back-up, or for any purpose
8 other than compliance with a court order. Any image so retrieved
9 shall be secured by the Department of Public Safety. The image
10 shall then be subject to the conditions contained within this
11 subsection. Facial images collected under the specifications
12 contained herein shall be collected using a white background and no
13 facial image shall be collected using a blue background so that
14 facial images collected in compliance with this subsection may be
15 more readily distinguished from facial images previously collected
16 at a higher resolution. The Department shall not require any person
17 submitting to a photograph or facial image collection in connection
18 with the issuance or renewal of a driver license, learner permit,
19 intermediate Class D license, or identification card to remove
20 prescription corrective eyeglasses.

21 J. The committee that has oversight for the Department of
22 Public Safety shall, within six (6) months of the effective date of
23 this act, appoint a person or persons of proper technical and legal
24 proficiency to verify that the Department and all policies,

1 procedures, practices, and agents of the Department are in
2 compliance with the terms, conditions, specification and
3 requirements contained in this section. Such person or persons
4 shall provide a report to the committee within one hundred twenty
5 (120) days after appointment and shall thereafter make additional
6 inspections and provide such findings to the committee every six (6)
7 months thereafter for a period of not less than five (5) years. The
8 findings of such person or persons shall be made public, available
9 in electronic and printed form, within one hundred twenty (120) days
10 after the submission of such findings to the committee. The cost
11 for such third-party verification of compliance, if any, shall be
12 appropriated from the budget of the Department of Public Safety.

13 K. The Department of Public Safety shall develop procedures
14 whereby any existing photograph or facial image of a person seeking
15 to obtain a renewal or replacement driver license or identification
16 card, that is contained in an active, archival or back-up database
17 shall be permanently destroyed. Such photograph or facial image
18 shall be replaced by a new photograph or facial image obtained from
19 the person renewing or replacing a driver license or identification
20 card. The new facial image shall permanently replace all previously
21 collected images in active databases and shall permanently replace
22 all previously collected facial images contained in archival or
23 back-up databases within six (6) months of collecting the new facial
24 image. Any person with a current driver license, learner permit,

1 intermediate Class D license, or identification card, desiring to
2 replace an existing photograph or facial image currently held by the
3 Department with a photograph or facial image of the resolution
4 specified in subsection I of this section may do so at any time and
5 shall pay to the Department a fee equal to the cost for a
6 replacement driver license or identification card. The terms and
7 conditions applicable to this subsection shall apply to such
8 replacement driver license or identification card.

9 L. The Department of Public Safety shall develop a procedure
10 that allows persons to use a mailing address, instead of a physical
11 address, on their driver license or identification card.

12 M. The Department of Public Safety shall develop a procedure
13 for a person to renew a driver license or identification card by
14 mail when unable to renew in person at the time of the expiration or
15 within six (6) months prior to the expiration of a driver license or
16 identification card.

17 SECTION 3. This act shall become effective November 1, 2009.

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