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# Protecting State Driver's License Information

## Background

Currently, 19 states plus the District of Columbia and Puerto Rico have enacted laws making driver's licenses available to eligible state residents regardless of their immigration status.<sup>1</sup> Several other states are considering similar policies.

Under the federal REAL ID Act of 2005,<sup>2</sup> states may issue driver's licenses to applicants who are U.S. citizens, lawfully residing immigrants, and/or people who cannot prove that they are authorized to be in the U.S. REAL ID-compliant licenses may be provided only to lawfully residing individuals. States may also issue licenses that do not satisfy REAL ID Act criteria ("non-REAL ID licenses" or "standard licenses") to citizens and immigrants of all immigration statuses, though state laws and rules for obtaining these licenses differ.

States have good reason to ensure that information provided to driver's license agencies is not made available to U.S. Department of Homeland Security (DHS) agencies such as U.S. Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP) for immigration enforcement

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<sup>1</sup> *State Laws Providing Access to Driver's Licenses or Cards, Regardless of Immigration Status*, [www.nilc.org/state-laws-providing-dl-access/](http://www.nilc.org/state-laws-providing-dl-access/). The laws enacted in Massachusetts and Rhode Island will be effective on July 1, 2023. Minnesota's law will be effective on October 1, 2023.

<sup>2</sup> The REAL ID Act of 2005 requires states to meet certain requirements, including proof of lawful presence in the U.S., for their licenses to be acceptable as identification for certain federal purposes. The act also allows for states to issue licenses that do not comply with REAL ID Act requirements.

purposes.<sup>3</sup> Many of the state laws authorizing issuance of licenses to residents regardless of their immigration status include provisions limiting affirmative disclosure of department of motor vehicles (DMV) information. But DHS may have independent access to some of that data through means such as electronic networks, or simply by requesting information. State officials may be unaware of how these systems work or of whether their agencies comply with state rules.

This issue brief outlines some steps that states have taken and that advocates can pursue to protect confidential information provided to their DMVs. We provide links to the laws that have been enacted and policies that have been adopted. We do not suggest that these laws and policies are all models for other states. They are generally a result of negotiations or compromises that were achievable in a particular year. Some laws and policies are more comprehensive or stronger than others. Protecting consumer privacy often requires a multi-year strategy, and an imperfect protection may be the first step in the process.

### **To protect drivers' privacy, you will need to understand the mechanisms by which DHS and its component agencies obtain information from driver's license databases**

The mechanisms DHS uses to obtain information from driver's license databases differ from state to state. Potential means of obtaining the information include public records act (PRA) requests or having conversations with the DMV or the state attorney general's office.

For a description of some mechanisms used in California, see [How California Driver's License Records Are Shared with the Department of Homeland Security](#), which summarizes the results of PRA requests submitted by the ACLU of Northern California and NILC.<sup>4</sup>

## **Explore administrative measures and other strategies to limit DHS access to DMV information**

A January 2018 [news article](#) revealed that the state of **Washington's** Department of Licensing (DOL), the agency that issues driver's licenses, had been releasing information from driver's license applications and photographs to ICE in response to a simple request.<sup>5</sup> This occurred despite the Washington governor's sweeping 2017 executive order banning the use of state resources to enforce federal immigration law.<sup>6</sup> In response to strong advocacy, the state instituted new policies including:

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<sup>3</sup> For an overview of information-sharing mechanisms, see *Untangling the Immigration Enforcement Web: Basic Information for Advocates about Databases and Information-Sharing Among Federal, State, and Local Agencies* (NILC, Sep. 2017), [www.nilc.org/untangling-immigration-enforcement-web/](http://www.nilc.org/untangling-immigration-enforcement-web/).

<sup>4</sup> (Dec. 2018), [www.nilc.org/how-calif-dl-records-shared-with-dhs/](http://www.nilc.org/how-calif-dl-records-shared-with-dhs/).

<sup>5</sup> Nina Shapiro, "Washington State Regularly Gives Drivers' Info to Immigration Authorities; Inslee Orders Temporary Halt," *Seattle Times*, Jan. 11, 2018, <https://www.seattletimes.com/seattle-news/times-watchdog/washington-state-regularly-gives-drivers-info-to-immigration-authorities-inslee-orders-temporary-halt/>.

<sup>6</sup> Executive Order 17-01: Reaffirming Washington's Commitment to Tolerance, Diversity, and Inclusiveness (Office of the Governor, State of Washington, Feb. 23, 2017), [https://www.governor.wa.gov/sites/default/files/exe\\_order/eo\\_17-01.pdf](https://www.governor.wa.gov/sites/default/files/exe_order/eo_17-01.pdf).

- ▶ DOL employees are prohibited from sharing information with ICE in response to either civil immigration enforcement queries or inquiries under 8 USC secs. 1324, 1325, and 1326 (criminal immigration enforcement).<sup>7</sup> All requests for information from federal immigration agencies go through the governor's office for review. Only requests with judicial warrants are answered.
- ▶ A case-by-case review is now required for law enforcement requests to the DOL License Integrity Unit (LIU) for photos, applications, vehicle titles, and other documents.<sup>8</sup>
- ▶ The state terminated ICE's and the CBP Office of Professional Responsibility's access to the state's online Driver and Plate Search (DAPS) database and revised the DAPS user agreement to prohibit its use "for purposes of investigating, locating, or apprehending individuals for immigration related violations" (emphasis added).<sup>9</sup>
- ▶ The DOL no longer transmits Social Security numbers to the statewide law enforcement telecommunications system, ACCESS (the acronym for "A Centralized Computerized Enforcement Service System"), which is operated by the Washington State Patrol (WSP).
- ▶ Law enforcement agencies must enter into a contract with the WSP to use ACCESS. The contract contains a permissible use clause limiting searches to criminal investigations. Users must include a purpose code for each search.
- ▶ Driver's license applicants are no longer required to provide their place of birth.<sup>10</sup>

The **California** attorney general issued guidance implementing the California Values Act's (SB 54's) database provisions requiring that all users of the California Law Enforcement Communications System (CLETS) agree that they will not use any information for purposes of immigration enforcement, with respect to an individual who does not have a criminal history.<sup>11</sup> In addition, all CLETS-subscribing

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<sup>7</sup> 8 USC 1324 prohibits "bringing in and harboring certain aliens"; 8 USC 1325 prohibits "unlawful entry by alien"; and 8 USC 1326 prohibits "reentry of removed aliens."

<sup>8</sup> Emily Boerger, "DOL Terminates Data Contracts with Federal Immigration Agencies," *Washington State Wire*, MAY 17, 2018, <https://washingtonstatewire.com/dol-terminates-data-contracts-with-federal-immigration-enforcement-units/>.

<sup>9</sup> *Id.*

<sup>10</sup> Jessica Lee, "WA Drivers-License Applications No Longer Ask Where a Person Was Born," *Seattle Times*, Jan. 26, 2018, <https://www.seattletimes.com/seattle-news/wa-drivers-license-applications-no-longer-ask-where-a-person-was-born/>.

<sup>11</sup> Information Bulletin from Xavier Becerra, Attorney General of California, to All Chiefs of Police, Sheriffs, and Executives of California Law Enforcement Agencies, Subject: California Values Act's Database Guidance (No. 18-10-CJIS, Oct. 1, 2018), [https://oag.ca.gov/sites/all/files/agweb/pdfs/info\\_bulletins/18-10-cjis.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/info_bulletins/18-10-cjis.pdf).

CLETS is a "law enforcement communications network available to all public agencies of law enforcement within the state." *California Law Enforcement Telecommunications System: Policies, Practices and Procedures (and Statutes)* (Office of the Attorney General, California Dept. of Justice, Dec. 2019), <https://oag.ca.gov/sites/default/files/clets-ppp%2012-2019.pdf>, p. 10. It "connects public safety agencies across the state to criminal histories, driver records, and other databases." "California Law Enforcement Telecommunications System" (Electronic Frontier Foundation webpage), <https://www.eff.org/cases/california-law-enforcement-telecommunications-system>.

entities must submit Values Act compliance documentation or face termination of access to CLETS.<sup>12</sup> ICE Enforcement and Removal Operations and the Automated Regional Justice Information System in San Diego County have refused to agree to the terms of a new agreement and have been cut off from access to CLETS.<sup>13</sup>

### **Litigation may be necessary to accomplish administrative changes limiting DHS access to DMV information in your state**

In **Vermont**, advocates settled a lawsuit filed in the local U.S. district court challenging the state DMV's racially discriminatory information-sharing practice and collaboration with federal immigration agents, which primarily targeted Latinx individuals.<sup>14</sup> The settlement includes provisions (1) limiting the information the DMV can collect and prohibiting the DMV from making copies of documents people submit when applying for driver's licenses, (2) requiring the destruction of documents previously obtained, and (3) outlining business protocols that DMV must follow when receiving information requests from federal agencies, to limit the circumstances under which that information may be shared with them.

### **Take affirmative steps to ensure that unauthorized individuals are not identified or isolated through application procedures or license issuance**

- ▶ Standard licenses should be available to citizens as well as immigrants regardless of their status.<sup>15</sup>
- ▶ Application procedures should not discriminate based on the type of license an applicant is seeking. For example, a state could use the same application form for all applicants and could choose not to indicate which documents an applicant used to prove age or identity, the person's eligibility or ineligibility for a Social Security number, or the person's citizenship or immigration status.
- ▶ Adopt provisions prohibiting requirements that would compel applicants to admit in writing that they do not have proof of lawful presence in the U.S.<sup>16</sup> or to explain why they are ineligible for a Social Security number.<sup>17</sup>

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<sup>12</sup> PowerPoint presentation by David Carlsen, CLETS Information Technology Representative, to CLETS Advisory Committee, Subject: Senate Bill 54, the California Values Act (June 26, 2019),

<https://www.documentcloud.org/documents/6181659-SB54-Presentation-CAC.html>.

<sup>13</sup> Saira Hussain, "California DOJ Cuts Off ICE Deportation Officers from State Law Enforcement Database" (Electronic Frontier Foundation, Dec. 18, 2019), <https://www.eff.org/deeplinks/2019/12/california-doj-cuts-ice-deportation-officers-state-law-enforcement-database>.

<sup>14</sup> Migrant Justice, et al. v. Nielsen, et al., No. 5:18-cv-00192 (D. Vt., Jan. 15, 2020), [www.nilc.org/wp-content/uploads/2020/01/Migrant-Justice-v-Nielsen-settlement-2020-01-15.pdf](http://www.nilc.org/wp-content/uploads/2020/01/Migrant-Justice-v-Nielsen-settlement-2020-01-15.pdf).

<sup>15</sup> As is the case in California, Maryland, New Jersey, New Mexico, New York, Oregon, Vermont, and Washington.

<sup>16</sup> See, e.g., New York's A3675B, sec. 5,

[https://nyassembly.gov/leg/?default\\_fld=&leg\\_video=&bn=A03675&term=2019&Text=Y](https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A03675&term=2019&Text=Y); Massachusetts' H.4805 sec. 1; Minnesota's HF.4 article 1, sec. 3.

<sup>17</sup> See, e.g., New Jersey's A4743, sec. 5, <https://legiscan.com/NJ/text/A4743/2018>.

- ▶ Adopt provisions that limit the information and documents that must be collected.<sup>18</sup>
- ▶ Adopt provisions limiting retention of documents presented in the application process, thus protecting those documents from disclosure.<sup>19</sup>
- ▶ To the extent permissible under the REAL ID Act, minimize the difference in appearance between REAL ID and non-REAL ID or standard licenses.<sup>20</sup>
- ▶ Refrain from imposing more burdensome requirements on applicants for non-REAL ID licenses than on applicants for REAL ID licenses.<sup>21</sup>

## Enact legislation to protect the confidentiality of driver's license information

- ▶ Statutory language should protect the confidentiality of documents and information provided in applying for a license.
- ▶ Statutory language should limit the disclosure of records that indicate whether a person has a REAL ID or a non-REAL ID license.

Examples of enacted provisions are:

- ▶ California Vehicle Code 12801.9(j) and (k) (regarding non-REAL ID licenses):<sup>22</sup>

(j) Information collected pursuant to this section is not a public record and shall not be disclosed by the department, except as required by law.

(k) Documents provided by applicants to prove identity or residency pursuant to this section shall not be disclosed except in response to a subpoena for individual records in a criminal proceeding or a court order, or in response to a law enforcement request to address an urgent health or safety need if the law enforcement agency certifies in writing the specific circumstances that do not permit authorities time to obtain a court order. Immigration enforcement, as defined in Section 7284.4 of the Government Code, does not constitute an urgent health and safety need for purposes of this subdivision.<sup>23</sup>

- ▶ California Vehicle Code 12800.7(b) (regarding all licenses):<sup>24</sup>

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<sup>18</sup> *Id.*

<sup>19</sup> New York's A3675B, sec. 5 (note 17, above); New Jersey's A4743, sec. 5 (note 18, above).

<sup>20</sup> New York's A3675B, sec. 5 (note 17, above); Virginia's SB34, sec. 46.2-328.3 B.1. <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+SB34ER2>.

<sup>21</sup> See New Jersey's A4743, sec. 8, <https://legiscan.com/NJ/text/A4743/2018>, which requires the same point total to prove identity for REAL ID and non-REAL ID licenses.

<sup>22</sup> [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=12801.9&lawCode=VEH](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=12801.9&lawCode=VEH).

<sup>23</sup> California's AB-1766 (2022) clarified that immigration enforcement does not constitute an urgent health and safety need for purposes of this subdivision.

<sup>24</sup> [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=12800.7&lawCode=VEH](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=12800.7&lawCode=VEH).

Notwithstanding any other law, any document provided by the applicant to the department for purposes of proving the applicant's identity, true, full name, California residency, or that the applicant's presence in the United States is authorized under federal law, is not a public record and may not be disclosed by the department except in response to a subpoena for individual records in a criminal proceeding or a court order, or in response to a law enforcement request to address an urgent health or safety need if the law enforcement agency certifies in writing the specific circumstances that do not permit authorities time to obtain a court order. Immigration enforcement, as defined in Section 7284.4 of the Government Code, does not constitute an urgent health and safety need for purposes of this subdivision.<sup>25</sup>

► Under the **New York** law:<sup>26</sup>

Any portion of any record retained by the commissioner in relation to a noncommercial driver's license or learner's permit application or renewal application that contains the photo image or identifies the Social Security number, telephone number, place of birth, country of origin, place of employment, school or educational institution attended, source of income, status as a recipient of public benefits, the customer identification number associated with a public utilities account medical information or disability information of the holder of, or applicant for, such license or permit is not a public record and shall not be disclosed in response to any request for records except: (a) to the person who is the subject of such records; or (b) where expressly required pursuant to chapter three hundred three of part A of subtitle vi of title forty-nine of the United States code; or (c) where necessary to comply with a lawful court order, judicial warrant signed by a judge appointed pursuant to article III of the United States constitution, or subpoena for individual records issued pursuant to the criminal procedure law or the civil practice law and rules.

In addition:

The commissioner shall not disclose or otherwise make accessible original documents or copies of documents collected from noncommercial driver's license or learner's permit applicants or renewal applicants to prove identity, age, or fitness [subject to the same exceptions as the preceding section].<sup>27</sup>

ICE has interpreted the New York provisions to prevent its access to DMV data through the automated information exchange system, Nlets.<sup>28</sup> According to ICE, "New York has blocked U.S. Immigration and Customs Enforcement (ICE) [through Nlets] by ORI [originating agency identifier]

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<sup>25</sup> California's [AB-1766](#) (2022), clarified that immigration enforcement does not constitute an urgent health and safety need for purposes of this subdivision.

<sup>26</sup> New York's [A3675B](#), sec. 2, [https://nyassembly.gov/leg/?default\\_fld=&leg\\_video=&bn=A03675&term=2019&Text=Y](https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A03675&term=2019&Text=Y).

<sup>27</sup> *Id.*

<sup>28</sup> Nlets describes itself as "the premiere interstate justice and public safety network in the nation for the exchange of law enforcement-, criminal justice-, and public safety-related information ..." <https://www.nlets.org/about/who-we-are>. Data exchanged through Nlets includes state driver's license and vehicle registration information, as well as criminal justice information. ICE, Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) are "core members of Nlets. *Nlets Overview* (PowerPoint), available from <https://www.nlets.org/about/hosting> (under "Most Recent Library Items").

codes, and has instructed all law enforcement agencies/departments with access that providing New York DMV records to ICE will result in a loss of access to their agency."<sup>29</sup>

- ▶ Under **Virginia's** SB34, sec. 46.2-328.3 C, the Department of Motor Vehicles shall not release proof documents to obtain a driver privilege card, information regarding the type of proof documentation provided, and applications except upon request of the applicant or pursuant to a court order.<sup>30</sup>
- ▶ Under **Virginia's** HB 2163, sec. 46.2-208 E, the Department of Motor Vehicles is prohibited from releasing "privileged information" unless the requester has entered into a written agreement authorizing the release.<sup>31</sup> The statute limits the purposes for which privileged information may be released, such as for insurance claims, vehicle title checks, and car manufacturer recalls. Information disseminated to third parties or by third parties is subject to the same restrictions — and may be released only for the original purpose for which it was sought. Under sec. 46.2-208 G, the DMV must conduct annual audits of the release of privileged information.<sup>32</sup> Under sec. 46.2-208 H, requests for privileged information by governmental agencies are subject to a ban on the DMV's dissemination of information for civil immigration enforcement purposes without a lawful judicial order, judicial subpoena, or judicial warrant.<sup>33</sup>
- ▶ Statutory language can protect the confidentiality of information regarding an applicant's Social Security number or ineligibility for one. For example:
  - **California** Vehicle Code sec. 1653.5(f) provides that, "Notwithstanding any other law, information regarding an applicant's social security account number, or ineligibility for a social security number, obtained by the department pursuant to this section, is not a public record and shall not be disclosed by the department except for any of the following purposes ...."<sup>34</sup>
  - **New Jersey's** A4743 sec. 8 protects the confidentiality of information regarding an applicant's Individual Taxpayer Identification Number, Social Security number, or ineligibility for a Social

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<sup>29</sup> Lewis-McCoy et al v. Wolf et al (1:20-cv-01142-JMF)(S.D.N.Y.), Administrative Record, Document 43-1, filed Apr. 24, 2020, p. 18 of 64. ORI is an abbreviation for "originating agency identifier," and an ORI code identifies the agency making a request through Nlets. See "Section 01: Introduction," Nlets Wiki/User Guide, [https://wiki.nlets.org/index.php/Section\\_01:\\_Introduction#Control\\_Terminal](https://wiki.nlets.org/index.php/Section_01:_Introduction#Control_Terminal).

<sup>30</sup> Virginia's SB 34, sec. 46.2-328.3 C, <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+SB34ER2>. Sec. 46.2-328.3 C also sets conditions for the release of information related to issuance of a driver privilege card. These limited conditions reflect law enforcement agencies' open access to driver's license information. Advocates will continue to press for stronger protections.

<sup>31</sup> Virginia's HB 2163, sec. 46.2-208 E, <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0421>. Privileged information, as defined in sec. 46.2-208 A. 1, includes personal information as defined in sec. 2.2-3801, driver information (all data that relates to driver's license status and history), identification card status, and vehicle information.

<sup>32</sup> Virginia's HB 2163, sec. 46.2-208 G, <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0421>.

<sup>33</sup> Virginia's HB 2163, sec. 46.2-208 G, <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0421>.

<sup>34</sup> California Vehicle Code sec. 1653.5(f), <https://codes.findlaw.com/ca/vehicle-code/veh-sect-1653-5.html>.

Security number, subject to certain exceptions, including where there is a warrant signed by a state or federal judge, a lawful court order, or a subpoena.<sup>35</sup>

- ▶ Statutory language in some states specifically limits whether DMV information may be used for civil immigration enforcement.
  - Some states have included a restriction on the release of information pertaining to immigration status<sup>36</sup> or for purposes related to federal immigration laws.<sup>37</sup>
  - **Washington's** [Keep Washington Working](#) law contains sweeping limits on the state's entanglement in immigration enforcement, though it contains no specific reference to DMV records.<sup>38</sup>
  - Sec. 46.2-208 B.9. of **Virginia's** law, HB 2163, prohibits dissemination to government and law enforcement agencies of any "privileged information" for any purposes related to civil immigration enforcement without the consent of the subject of the information or without a lawful judicial order, judicial subpoena, or judicial warrant.<sup>39</sup> Individuals whose information is requested for civil immigration enforcement purposes must be notified of the requests within three business days. As mentioned above, those who request privileged information under section E must certify that the information will not be used for civil immigration purposes or knowingly disseminated to a third party for civil immigration enforcement.<sup>40</sup>
  - **Illinois'** HB [3882](#) prohibits the Secretary of State from sharing certain personal information or documents with immigration agents without a judicial warrant, subpoena, or court order, and prohibits sharing data with third parties unless those parties certify that they will not use or knowingly share the data for civil immigration enforcement purposes.<sup>41</sup>
- ▶ Statutory language can also prevent the use of state or national criminal justice networks to disseminate information for civil immigration enforcement. For example, under **Virginia's** sec. 46.2-208 E, agreements between the DMV and the Department of State Police for the release of privileged information must specify that such information can be disseminated only to criminal justice agencies and can be accessed, used and disseminated only for criminal justice purposes.<sup>42</sup>

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<sup>35</sup> New Jersey's A4743, <https://legiscan.com/NJ/text/A4743/2018>; see also Virginia's SB34, sec. 2.2-3808.1, <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+SB34ER2>.

<sup>36</sup> See, e.g., Nevada's SB 303, sec. 1, subsection 10, [https://www.leg.state.nv.us/Session/77th2013/Bills/SB/SB303\\_EN.pdf](https://www.leg.state.nv.us/Session/77th2013/Bills/SB/SB303_EN.pdf), and Washington, DC's B20-275, sec. 2(b), <http://dcclims1.dccouncil.us/images/00001/20131118115944.pdf>.

<sup>37</sup> See, e.g., New Jersey's A4743, secs. 4 and 8, <https://legiscan.com/NJ/text/A4743/2018>.

<sup>38</sup> <http://lawfilesexternal.leg.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/Senate/5497-S2.SL.pdf>.

<sup>39</sup> Virginia's HB 2163, sec. 46.2-208 B.9. <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0421> Privileged information includes personal information as defined in sec. 2.2-3801 and driver information.

<sup>40</sup> Virginia's HB 2163, sec. 46.2-208 B.9. <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0421>.

<sup>41</sup> Illinois HB 3882, Sec. 11(g) and (h), <https://ilga.gov/legislation/103/HB/PDF/10300HB3882lv.pdf>

<sup>42</sup> Virginia's HB 2163, sec. 46.2-208 E, <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0421>.



The State Police operates the Virginia Criminal Justice Network (VCIN), through which ICE obtains driver information.<sup>43</sup>

- ▶ Statutory language may prevent the sharing of driver's license data through provisions that more broadly prevent state agencies from disclosing personal data for immigration enforcement purposes. For example, under **Colorado's** SB 131:
  - State employees are prohibited from disclosing personal identify information, including through databases or automated networks, "for the purpose of investigating for, participating in, cooperating with, or assisting in federal immigration enforcement, including enforcement of civil immigration laws and 8 U.S.C. sec. 1325 or 1326, except as required by federal or state law or as required to comply with a court-issued subpoena, warrant, or order."<sup>44</sup>
  - State employees who intentionally violate provisions of the law are subject to an injunction and a civil penalty of fifty thousand dollars.<sup>45</sup>
  - Third parties (persons or entities that are not state agencies or employees or otherwise associated with state agencies) are subject to the same limitation and must certify their compliance with it.<sup>46</sup>

In **Maryland**, the Driver Privacy Act, **HB 23** prohibits disclosure of personal information, facial recognition searches, photo image searches, or access to state or local law enforcement databases by federal agencies for immigration enforcement purposes in the absence of a valid federal or state judicial warrant; and requires reports of any such requests, searches or disclosures by the Motor Vehicle Administration, State Police, and the Department of Public Safety and Correctional Services.<sup>47</sup>

**California's** **AB-1766** prohibits government agencies or departments, law enforcement agencies, commercial entities, or other persons from obtaining access, using, or otherwise disclosing,

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<sup>43</sup> *Virginia DMV Data Sharing with ICE: How Does It Happen and How HB2163 Can Stop It* (Legal Aid Justice Center, Virginia Coalition for Immigrant Rights, Just Futures Law, and ACLU People Power Fairfax, Feb. 3, 2021), <http://www.justice4all.org/wp-content/uploads/2021/02/DMV-Privacy-Bill-HB2163-Report-2.3.21.pdf>.

<sup>44</sup> Colorado's SB 131, sec. 24-74-103, [https://leg.colorado.gov/sites/default/files/2021a\\_131\\_signed.pdf](https://leg.colorado.gov/sites/default/files/2021a_131_signed.pdf).

<sup>45</sup> Colorado's SB 131, sec. 24-74-107, [https://leg.colorado.gov/sites/default/files/2021a\\_131\\_signed.pdf](https://leg.colorado.gov/sites/default/files/2021a_131_signed.pdf).

<sup>46</sup> Colorado's SB 131, sec. 24-74-105, [https://leg.colorado.gov/sites/default/files/2021a\\_131\\_signed.pdf](https://leg.colorado.gov/sites/default/files/2021a_131_signed.pdf). In 2020, the Colorado attorney general issued guidance to state government agencies restricting the sharing of a wide range of personal identifying information (PII), including place of birth, Social Security or tax identification number, and immigration or citizenship status. This information could be disclosed for active criminal investigations, in response to a court order, subpoena, or warrant, as required by federal or state law or rules, and could not be shared solely for federal civil immigration purposes. Guidance to Executive Branch Departments and Agencies on Data Privacy, from Colorado Governor Jared Polis, May 20, 2020, <https://www.documentcloud.org/documents/6923100-POLIS-EXECUTIVE-GUIDANCE.html>. Advocates sought greater protections because they were concerned that ICE would claim that it was pursuing criminal investigations when its intent was to carry out civil immigration enforcement. They also feared that the word "solely" left too much room for personal information to be shared.

<sup>47</sup> Maryland [House Bill 23 \(2021\)](#).

noncriminal history information maintained by the Department of Motor Vehicles, for the purpose of immigration enforcement.<sup>48</sup>

Under **Rhode Island's SB 2006**, the motor vehicle division "shall require any agency or entity that receives or has access to records or information from the division, including photo images, to certify, before such receipt or access, that such person or entity shall not (1) use such records or information for immigration enforcement purposes; or (2) Disclose such records or information to any other agency or entity, or to any employee or agent of any such agency or entity, unless that other agency or entity also certifies that the information will not be used for purposes of enforcing immigration law."<sup>49</sup>

**Minnesota's HF 4** similarly requires data requesters to certify that they will not "use the data for civil immigration enforcement purposes or disclose the data to a state or federal government entity that primarily enforces immigration law or to any employee or agent of any such government entity."<sup>50</sup> The law provides for audits, and potential civil and criminal penalties for violations of the certification requirement.

## Limit access to photographs and images

Local, state, and federal law enforcement agencies, including ICE, have long relied on driver's license databases to obtain information, such as addresses, about drivers and car owners or to obtain driver's license photos.<sup>51</sup> And for many years, the FBI and ICE have asked states to use their face recognition systems to search photos in their DMV databases.<sup>52</sup> Here are some suggestions for how to limit immigration enforcement's access to residents' photos and images stored in state databases:

- ▶ Determine whether your state runs facial recognition searches against photos in DMV databases at the request of ICE or the FBI, or if the federal agencies can conduct their own facial recognition searches against the databases.<sup>53</sup> Determine whether your state shares driver's license photos

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<sup>48</sup> California AB-1766 sec. 6 (2022).

<sup>49</sup> Rhode Island SB 2006, adding 31-10.4-3 (confidentiality of documents) to the "Motor and Other Vehicles" laws.

<sup>50</sup> Minnesota HF 4, article 2, sec. 5.

<sup>51</sup> *Untangling the Immigration Enforcement Web* (NILC, Sep. 2017), [www.nilc.org/wp-content/uploads/2017/09/Untangling-Immigration-Enforcement-Web-2017-09.pdf](http://www.nilc.org/wp-content/uploads/2017/09/Untangling-Immigration-Enforcement-Web-2017-09.pdf), pp. 16-18.

<sup>52</sup> See: *How U.S. Immigration & Customs Enforcement and State Motor Vehicle Departments Share Information* (NILC, May 2016), [www.nilc.org/ice-dmvs-share-information/](http://www.nilc.org/ice-dmvs-share-information/); *Untangling the Immigration Enforcement Web*, note 3, above; and Harrison Rudolph (Ctr. on Privacy & Technology, Georgetown Law School), *ICE Searches of State Driver's License Databases*, July 8, 2019, <https://medium.com/center-on-privacy-technology/ice-searches-of-state-drivers-license-databases-4891a97d3e19>.

<sup>53</sup> Alexis Arnold, "What States Do to Protect Undocumented Immigrants' Driver's License Information," *HuffPost*, July 12, 2019, [https://www.huffpost.com/entry/undocumented-immigrants-drivers-license-state-privacy-laws\\_n\\_5d2788cae4b0bd7d1e197225](https://www.huffpost.com/entry/undocumented-immigrants-drivers-license-state-privacy-laws_n_5d2788cae4b0bd7d1e197225).

through automated systems such as [Nlets Photo Sharing](#) or based on a simple request.<sup>54</sup> These searches and photo sharing could be prevented administratively in some states.

- ▶ Consider legislation that specifically prohibits your state from running facial recognition searches against photos in the DMV databases at the request of ICE, the FBI, or other federal agencies or that allows the federal agencies to run their own facial recognition searches against the databases.
  - For example, in 2021 **Utah** enacted SB 34, which bans government entities from using facial recognition technology to scan driver's license databases, with certain exceptions for local law enforcement, and prohibits the use of facial recognition systems for civil immigration enforcement.<sup>55</sup>
  - In August 2021, the governor of **Illinois** signed SB 225, which prohibits Illinois's secretary of state from providing facial recognition search services or photographs obtained in the process of issuing an identification card or a driver's license or permit to any federal, state, or local law enforcement agency or other governmental entity for the purpose of enforcing federal immigration laws.<sup>56</sup>
  - In December 2021, the **Maryland** Legislature overrode the governor's veto of HB 23. The new law denies access to photographs in public records or facial recognition searches for the purpose of enforcing federal immigration law, in the absence of a valid federal or state judicial warrant.<sup>57</sup>
- ▶ Consider comprehensive legislation limiting disclosure of personal information for immigration enforcement that would include facial recognition searches. For example, **Colorado's** SB-131 prohibits state employees from disclosing or making accessible personal information for use in immigration enforcement except as required by federal or state law or to comply with a court-issued subpoena, warrant, or order.<sup>58</sup>
- ▶ Consider legislation that imposes restrictions on transmission of driver's license photos through automated systems or based on a request from a law enforcement agency — for example, by requiring that photos not be transmitted except if authorized by a judicial warrant or a court order.<sup>59</sup>

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<sup>54</sup> <https://www.nlets.org/resources/maps/initiatives/key>.

<sup>55</sup> Utah's SB 34, <https://le.utah.gov/~2021/bills/sbillenr/SB0034.pdf>.

<sup>56</sup> Illinois's SB 225, [Illinois General Assembly - Full Text of SB0225 \(ilga.gov\)](https://www.ilga.gov/legislation/2021/2021%20Regular%20Session/House/Bills/200-299/SB0225.htm).

<sup>57</sup> [2021 Regular Session - House Bill 23 Enrolled \(maryland.gov\)](https://legis.maryland.gov/house/bills/2021/2021%20Regular%20Session/House/Bills/200-299/HB0023.htm)

<sup>58</sup> Colorado's SB 131, sec. 24-74-103, [https://leg.colorado.gov/sites/default/files/2021a\\_131\\_signed.pdf](https://leg.colorado.gov/sites/default/files/2021a_131_signed.pdf). Sec. 24-74-102 includes "photograph" in the definition of personal identifying information.

<sup>59</sup> See, e.g., New Jersey's A4743, sec. 8, <https://legiscan.com/NJ/text/A4743/2018>.