

Legislative Analysis



ENHANCED DRIVER LICENSES AND STATE ID CARDS

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House Bill 5535 as passed by the House
Sponsor: Rep. Steve Tobocman

House Bill 5536 as passed by the House
Sponsor: Rep. Ed Clemente

House Bill 5537 as passed by the House
Sponsor: Rep. Bill Huizenga
Committee: Transportation

First Analysis (2-11-08)

BRIEF SUMMARY: The bills would provide for an enhanced driver license and state identification card; define the terms "resident," and "legal presence"; direct the Secretary of State to determine the genuineness, regularity, and legality of applications for the identification; set a criminal penalty for making false statements when applying for an enhanced driver license or state ID card; and establish an Enhanced Driver License and State Identification Card Fund within the state treasury, and allocate its revenue

FISCAL IMPACT: A fiscal analysis of the impact on the state of implementing the bills is in process. See *FISCAL INFORMATION* for other information.

THE APPARENT PROBLEM:

According to press reports, "Michigan's efforts to attract foreign businesses, investment, and scholars are dealt a severe blow because the state is denying driver licenses to anyone who isn't a permanent resident." (*Detroit News*, 2-77-08) The policy to deny driver licenses to all who are not permanent residents has been implemented by the Secretary of State, following an opinion issued by the Attorney General on December 27, 2007. (AG Opinion No. 7210) See *BACKGROUND INFORMATION*.

An attorney general's opinion has the force of law for state agencies. Opinions are issued in response to written inquiries posed by policymakers--in this instance, a query forwarded by a state legislator would wanted to know whether the Michigan Secretary of State was required to issue a driver license to an illegal alien living in Michigan, in light of an earlier AG opinion rendered in 1995 (OAG No. 6883).

In response, the Attorney General's December 2007 opinion concluded that "Only a resident of Michigan may be issued a Michigan driver's license. A person who is not a lawful resident of the United States cannot be a resident of this State for purposes of obtaining a driver's license under sections 51a and 303(1)(h) of the Michigan Vehicle Code, MCL 257.51 and MCL 257.303(1)(h)."

In saying that the Michigan Department of State cannot issue driver licenses or state identification cards to illegal immigrants ("those who are not lawful residents of the U.S."), the opinion also seemed to limit ID cards and driver licenses to permanent state residents. As a result, and as officials from some of Michigan's largest international corporations testified, legitimate professionals, many recruited from other countries--at least 35,000 university students and 375,000 workers, according to some estimates--cannot get driver licenses or ID cards that would help them travel freely to work and study.

Legislation has been introduced to allow the Secretary of State to issue driver licenses or state ID cards to Michigan residents who are not U.S. citizens but who can demonstrate a "legal presence" in Michigan.

THE CONTENT OF THE BILLS:

The bills would

- Provide for an enhanced driver license and state identification card.
- Define, only for the purposes of this act, the term "resident" to mean every person who resides in this state and establishes that he or she is legally present in the United States.
- Prohibit the Secretary of State from issuing a state ID card to people who are not U.S. citizens, unless they have documents to demonstrate they have a "legal presence," which means (but is not limited to) people federally authorized for employment in the United States; people with non-immigrant status authorized under federal law; and people who are the beneficiaries of an approved immigrant visa petition or a labor certification.
- Direct the Secretary of state to determine the genuineness, regularity, and legality of applications for the identification.
- Set a criminal penalty for making false statements when applying for an enhanced driver license or state ID card.
- Create an Enhanced Driver License and Enhanced Official State Personal Identification Card Fund within the state treasury, and allocate its revenue.

House Bill 5535 would create a new act, to be known as "the Enhanced Driver License and Enhanced Official State Personal Identification Card Act" for Michigan residents. [Under the bill, "resident" would be defined to mean every person who resides in this state and establishes that he or she is legally present in the United States. This definition applies to the provisions of this act only.]

Enhanced IDs as Proof of Identity at Borders. The bill specifies that the Secretary of State could, with the approval of the State Administrative Board, enter into a memorandum of understanding with any federal agency to obtain approval of an enhanced driver license or enhanced official state personal ID card as proof of identity and citizenship for people entering the United States at land and sea ports. Further, the SOS could, with the approval of the State Court [sic] Administrative Board together with a federal agency, enter into an agreement with the United Mexican States, Canada, or a Canadian province, for the purpose of implementing a border-crossing initiative.

The enhanced driver's license or state ID card could be issued to an applicant who provided satisfactory proof of his or her full legal name, U.S. citizenship, identity, date of birth, Social Security number, residence address, and a photographic identify document.

The bill specifies that an applicant could apply for either a standard driver license or ID card, or an enhanced driver license or ID card.

The enhanced driver license or state ID card would have to include reasonable security measures to protect against unauthorized disclosure of personal information. It could include facilitative technology limited to retaining and transmitting encrypted data, but *prohibiting* biometric data, and that were secure from unauthorized data access, and included reasonable security measures to protect against unauthorized disclosure of personal information. If it did so, an applicant would be required to sign a declaration acknowledging his or her understanding of the technology.

The holder of an enhanced driver license would be subject to every licensing sanction provided under the Michigan Vehicle Code.

Applications for Enhanced Licenses and ID Cards. An applicant who chose to apply for an enhanced driver license or enhanced state ID card would have to provide several items to the Secretary of State, including:

- A completed application (indicating the applicant's full legal name; any legal name change resulting from the applicant's adoption, marriage, divorce, or a court order; date of birth; residence address; height; gender; eye color; Social Security number; signature; and if applicable, the applicant's intention to be an organ donor);
- Documentation confirming the criteria noted above.
- The applicant's signed certification that the information presented is true and correct to the best of the applicant's knowledge.
- A \$50 fee.

Use of Photographs and Signatures. An applicant would have to allow the Secretary of State's office to take a photograph and a signature, and those could be used by any federal, state, or local government agency for law enforcement purposes authorized by law. To use the photograph and signature for other purposes, the Secretary of State would be required to get written authorization from the applicant.

The bill prohibits the display of a person's Social Security number on the face of the enhanced license or card.

Following an investigation, the Secretary of State could reject any application if not satisfied of the genuineness, regularity, and legality of the supporting documentation, or the truth of any statement. A decision by the Secretary of State to reject an application could be appealed under the Revised Judicature Act.

The Secretary of State would be required to retain copies of digital images of documents provided by the applicant, and could disclose them to a federal, state, or local government agency for any law enforcement purpose. Copies or digital images of documents retained would be exempt from disclosure under the Freedom of Information Act.

The photos of the applicants would be retained for one year, unless fraud were suspected, in which case photos would have to be kept for 10 years. The Secretary of State could disclose digital images of documents retained to a federal, state, or local government agency for any law enforcement purposes authorized by law.

Under the bill, the Secretary of State would be prohibited from compiling or maintaining a database that could be shared with a country other than the United States.

New Fund. The bill specifies that an Enhanced Driver License and Enhanced Official State Personal Identification Card Fund be created within the state treasury. The State Treasurer could receive money or other assets from any source for deposit into the Fund, and would direct the investment of the Fund. Money in the Fund at the close of the fiscal year would remain there, and not lapse to the General Fund. The Secretary of State would administer the Fund for auditing purposes, and would be required to spend money from the Fund upon appropriation, to pay the necessary expenses incurred to administer and enforce the law.

Application Fee & Fund Disbursement. An application for an enhanced driver license or state ID card would have to be accompanied by a \$50 fee, and the fee for renewal could not be more than \$50. (The fees would be non-refundable, except in the case of administrative error.) The money from the fees would be deposited into the Enhanced Driver License and Enhanced Official State Personal Identification Card Fund, after distribution, as follows:

- The Secretary of State would refund to each county or municipality acting as an examining officer or examining bureau \$2.50 for each applicant examined for an original enhanced driver license, if the application is not denied and the money refunded is paid to the county or local treasurer and is appropriated to the county, municipality, or officer or bureau receiving the money for the purpose of carrying out this act.
- The State Treasurer would deposit the sum of \$4 to the Traffic Law Enforcement and Safety Fund for each person examined for an original enhanced driver license.
- Except as otherwise provided below, \$4.50 of an original enhanced license and \$6 of a renewal would be appropriated to the Transportation Economic Development Fund.
- Notwithstanding the above, \$2.5 million would be deposited in the state treasury and credited to the General Fund, except that not more than \$1 million would be credited to the Gasoline Inspection and Testing Fund created under the Motor Fuels Quality Act.
- The money remaining after the other distributions would remain in the Enhanced Driver License and State ID Card Fund.

Penalty. A person who made a false certification or statement when applying for an enhanced driver license or enhanced official state personal identification card would be guilty of a felony punishable by imprisonment for not more than five years, or a fine of not more than \$5,000, or both.

House Bill 5537

House Bill 5537 would amend Public Act 222 of 1972, which authorizes the creation of the state's personal identification card, to revise the requirements for applications.

Legal Presence. The bill specifies the procedures a citizen of the United States must follow to receive an ID card, and also the procedures for those who are not citizens. If the applicant is not a citizen of the U.S., the applicant must provide documents demonstrating his or her legal presence. Under the bill, a person legally present includes, but is not limited to, a person federally authorized for employment in the United States, a person with non-immigrant status authorized under federal law, and a person who is the beneficiary of an approved immigrant visa petition or a labor certification. The Secretary of State could only issue a state ID card to a person not a U.S. citizen if that person was legally present in the state. The SOS would be required to adopt rules under the Administrative Procedures Act to administer this provision. Finally, a determination by the SOS that an applicant was not legally present in the United States could be appealed under the Revised Judicature Act.

The bill specifies that the Secretary of State could, with the approval of the State Administrative Board, enter into agreements with the U.S. government to verify whether a non-citizen applicant was legally authorized to be present in the United States.

Social Security Number Release. The bill allows the release of an applicant's Social Security number to another person in order to comply with law, and to carry out the Social Security Act in matters related to paternity, child support, and overdue child support. The Social Security number could not be displayed on the ID card.

The Secretary of State could reject any application if not satisfied of its legality or the truth of a statement in it.

Definitions of "Residence Address" and "Resident." House Bill 5537 (H-1) defines "residence address" to mean the place that is the settled home or domicile at which a person legally resides, which meets the definition of residence as defined in Section 11 of the Michigan Election Law. The bill defines "resident" to mean every person who legally resides in a settled home or domicile in this state with the intention of remaining in this state. The person who obtains legal employment in this state is presumed to have the intention of remaining in this state. This definition shall apply to the provisions of this act only.

Currently the law specifies the information a state ID card must contain. The bill would retain those provisions, adding "legal" name, "residence" address, and "digital photographic" image. The bill eliminates provisions concerning organ and tissue donors, designated patient advocates, and age of majority. The bill also provides that the ID card must contain physical security features designed to prevent the tampering with, counterfeiting of, or duplication of the official state personal identification card for fraudulent purposes.

Currently under the law, the Secretary of State is prohibited from using a person's image without written permission. House Bill 5537 would eliminate that provision, and specify that a person's digital photographic image or signature could be used (1) by a federal, state, or local government agency for a law enforcement purpose authorized by law; (2) by the Secretary of State for a purpose specifically authorized by law [the Secretary of State is

directed to forward to the Department of State Police the images of people required to be registered under the Sex Offender's Registration Act); and, (3) as necessary to comply with a law of this state or the United States.

The law also specifies what personal information (maintained from a record made during the application process) may be disclosed by the Secretary of State, listing particular instances when the release of information is authorized. House Bill 5537 would retain these provisions. In addition, the bill would allow the Secretary of State to disclose copies of digital photographic images and source documents in order to comply with federal, state, or local governmental agencies including a court or law enforcement agency, and to assist individual applicants themselves.

House Bill 5536

House Bill 5536 would amend the Code of Criminal Procedure (MCL 777.11b) to create a new sentencing guideline for the crime of "false certification or statement in application for enhanced driver license or enhanced official state personal identification card." The crime would be a Class E public safety crime which if violated would carry a maximum penalty of five years in prison.

BACKGROUND INFORMATION:

To read the official version of the five-page December 27, 2007 opinion issued by the attorney general--OAG Opinion No. 7210 entitled "Permanent Residency Requirement for Driver's Licenses"--visit the Michigan Department of Attorney General Web Site at <http://www.ag.state.mi.us/opinion/datafiles/2000s/op10286.htm>

FISCAL INFORMATION:

Any fiscal impact on state or local correctional systems would depend on how many offenders were convicted under the bills' criminal penalties for making a false certification. There are no data to indicate how many offenders might be affected. The felony to be created would be a Class E offense against public safety. Exclusive of sentences for habitual offenders, sentencing guidelines ranges for the minimum sentence for a Class E offense vary from 0-3 months (for which a nonprison sanction is required) to 24-38 months (for which a prison term is mandated).

To the extent that the bills increased the numbers of offenders sentenced to prison or to felony probation supervision, the state could experience increased costs. Average appropriated costs of prison incarceration are roughly \$32,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. Costs of parole and probation supervision average about \$2,000 per supervised offender per year. To the extent that affected offenders were sentenced to jail, affected counties could experience increased costs; jail costs vary by county.

Any increase in penal fine revenues could benefit local libraries, which are the constitutionally-designated recipients of those revenues.

ARGUMENTS:

For:

These bills are necessary in order that people who are not U.S. citizens but who are lawfully working in Michigan can obtain an official ID card, or driver license. Without the bills, as many as 300,000 people from foreign countries--such as engineers in auto manufacturing plants, professors in research centers, and graduate students on college campuses--will be denied mobility. Already, the policy implemented by the Secretary of State following an Attorney General opinion (OAG Opinion No.7210), has dampened professional recruitment by Michigan's international corporations.

To ensure fair treatment for people who are not U.S. citizens but who live and work lawfully in Michigan, House Bill 5537 allows the Secretary of State to issue an ID card or driver license if an applicant can provide documents demonstrating "legal presence." As the bill makes clear, a person legally present includes, but is not limited to, a person federally authorized for employment in the United States, a person with non-immigrant status authorized under federal law, and a person who is the beneficiary of an approved immigrant visa petition or a labor certification. If the Secretary of State ruled that an applicant was not legally present, then an appeal under the Revised Judicature Act would be possible.

Against:

Some who favor these bills (which clarify that legal foreign residents can obtain driver licenses), say the legislature should go further. They argue the legislature should tie-bar these bills to legislation that would implement the federal REAL ID law, adopted by the U.S. Congress and signed by President Bush in 2005, in order to enhance public safety following the attack on the United States by extremists on September 11, 2001. Implementation of that national law falls to the states, working together with the U.S. Department of Homeland Security.

The REAL ID Act of 2005 requires people entering federal buildings, boarding airplanes, or opening bank accounts to present identification that has met certain security and authentication standards. The Act is Division B of an act of the United States Congress titled Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005. It establishes national standards for state-issued driver licenses and non-driver identification cards; waives laws that interfere with construction of physical barriers at the borders; updates and tightens the laws on application for asylum and deportation of aliens for terrorist activity; introduces rules covering "delivery bonds" (rather like bail bonds but for aliens who have been released pending hearings); and funds some reports and pilot projects related to border security.

Response:

Implementation of the national REAL ID law has caused a lot of controversy nationwide. Critics note its high implementation costs (an estimated \$11 billion by the National Conference of State Legislatures), and charge that it essentially creates a national ID system. Since many states have notified Congress of their opposition to the law, implementation has been delayed until 2011, and revisions to the law are expected.

POSITIONS:

The Office of the Secretary of State supports the bills. (2-7-08)

The Henry Ford Health System supports the bills. (2-7-08)

Central Michigan University supports the bills. (2-7-08)

Ford Motor Company supports the bills. (2-7-08)

Robert Bosch Corporation supports the bills. (2-7-08)

The Alliance of Automobile Manufacturers supports the bills. (2-7-08)

The Michigan Health and Hospital Association supports House Bill 5535. (2-7-08)

The Detroit Regional Chamber of Commerce supports the bills. (2-7-08)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.