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Jill Shelley
Principal Analyst
785-296-3181
Jill.Shelley@kprd.ks.gov

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Transportation and Motor Vehicles

W-2 Driver's License as Identification

This article summarizes approaches states have taken to address the concerns of those who do not want photographs of themselves on driver's licenses or ID cards, primarily for religious reasons, and to provide driver's licenses or ID cards to those who cannot prove lawful presence in the United States.

Federal Requirements

Federal law enacted in 2005, in response to recommendations from the official 9/11 Commission, requires state-issued motor vehicle operator's licenses (driver's licenses) and personal identification (ID) cards used for certain official purposes – accessing Federal facilities, boarding federally regulated commercial aircraft, and entering nuclear power plants – to meet various security standards.⁸ Those standards include the verification of documents that prove the person applying for the driver's license or ID card is a U.S. citizen or is otherwise lawfully present in the United States. The "REAL ID" standards also require these features on each compliant driver's license and ID card issued by the states:

- the person's full legal name;
- the person's date of birth;
- the person's gender;
- a unique card number;
- a digital photograph of the person;
- the person's address;
- the person's signature;
- physical security features designed to prevent tampering, counterfeiting, or duplication of the document for fraudulent purposes; and
- a common machine-readable technology, with defined minimum data elements.

Federal law further allows a state that has met standards for driver's licenses and ID cards also to issue a driver's license or ID card that "clearly states on its face that it may not be accepted by any federal

⁸ The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Public Law 109-13, 119 Stat. 231, 302 (May 11, 2005) (codified at 49 U.S.C. 30301 note). Title II of that act, Improved Security for Drivers' Licenses and Personal Identification Cards, is known as the REAL ID Act. Regulations implementing that act may be found in 6 CFR Part 37. Department of Homeland Security Information on the Act and its implementation is available at <http://www.dhs.gov/secure-drivers-licenses>.

agency for federal identification or for any other official purpose” and “uses a unique design or color indicator to alert federal agency and other law enforcement personnel that it may not be accepted for any such purpose.”

The Department of Homeland Security by rule required states to be in full compliance with the REAL ID Act by January 15, 2013, but granted extensions for states who had made significant progress toward meeting the standards. As of September 2013, the Department of Homeland Security determined the following states have met the federal requirements: Alabama, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Iowa, Indiana, Kansas, Maryland, Nebraska, Ohio, South Dakota, Tennessee, Utah, Vermont, Wisconsin, West Virginia, and Wyoming.⁹

The Department of Homeland Security will determine when federal agencies will begin to enforce the law. An official press release dated December 20, 2012, stated the Department expected to “publish a schedule by early fall 2013 and begin implementation at a suitable date thereafter. Until the schedule is implemented, Federal agencies may continue to accept for official purposes driver’s licenses and identity cards issued by all states.” Such a schedule had not been released by October 1, 2013. The press release further stated, “Secure driver’s licenses and identification documents are a vital component of a holistic national security strategy. Law enforcement must be able to rely on government-issued identification documents and know that the bearer of such a document is who he or she claims to be.”

⁹ “DHS Determines 13 States Meet REAL ID Standards,” <http://www.dhs.gov/news/2012/12/20/dhs-determines-13-states-meet-real-id-standards>; “Countdown to REAL ID,” <http://www.ncsl.org/research/transportation/countdown-to-real-id.aspx>; and “Hawaii Fully Compliant with REAL ID Standards for Driver’s Licenses, Identification Cards,” <http://hidot.hawaii.gov/blog/2013/09/17/hawaii-fully-compliant-with-read-id-standards-for-drivers-licenses-state-identification-cards/>

Kansas law has, since 2000, specified that an applicant for a driver’s license or state-issued ID card must provide proof of lawful presence in the United States. Those provisions were strengthened in 2007, with passage of SB 9 (L. 2007, Ch. 160), which added multiple provisions designed to protect against fraud in the issuance of driver’s licenses, including a requirement for facial image capture and security features on the documents themselves. (See KSA 75-5156 and KSA 75-5157.) These features are being implemented by the Division of Vehicles at the Department of Revenue.

Driver’s Licenses and ID Cards without Photographs

Some states issue driver’s licenses (DL), ID cards, or both without photographs, generally for one or more of three general reasons: the applicant has religious objections to such a photograph, the person has a facial disfigurement, or the person is unavailable to be photographed, with the first being the most common. As noted above, federal law requires a driver’s license or ID card that will be valid for official federal identification purposes to be compliant with provisions of the REAL ID Act, including the requirement that such an ID include a facial photograph to enhance security. The law also allows a state to issue a driver’s license or an ID card that cannot be used for federal purposes if it offers a driver’s license or ID card that does comply with REAL ID.¹⁰

¹⁰ REAL ID Act, Section 2002 (d)(11): “In any case in which the State issues a driver’s license or identification card that does not satisfy the requirements of this section, ensure that such license or identification card—“(A) clearly states on its face that it may not be accepted by any Federal agency for federal identification or any other official purpose; and “(B) uses a unique design or color indicator to alert Federal agency and other law enforcement personnel that it may not be accepted for any such purpose.” Federal regulations regarding this provision are at 6 CFR 37.71.

State statutory and regulatory exemptions are summarized below.¹¹

State	DL, ID, or Both	Reason for Photo Exemption	Additional Information
Alaska	DL	No access to site where photo could be taken	Available only to those who have passed all required tests
Arkansas	DL	Religious objection	
	DL	Applicant is not available	
Illinois	Both	Religious objection	
	DL	Facial disfigurement	
	DL	Temporarily out of state	Must get license with photo within 45 days of returning to the state
Indiana*	DL	“Good cause for the omission”	If without a photo, will be labeled as “non-Secure ID”
Kentucky	DL	Applicant is not available, because military and stationed outside of Kentucky at renewal	
Minnesota	Both	Religious objection	Applicant must allow full-face image or provide another biometric identifier, such as fingerprints; photo exemption does not apply to an “enhanced” DL or ID card
Missouri	Both	Religious affiliation	State makes at least one location available where a photo may be taken by a staff member of the same gender as the applicant ^{a)}
Nebraska*	DL	Applicant is out of state	Court opinion in <i>Quaring v. Peterson</i> also provides religious objection as reason for no photo
Oregon	DL	Religious objection	
Pennsylvania	DL	Religious objection	
	DL	Absent from the state during entire renewal period	
	DL	“Public or private emergency”	
	ID	“Good cause”	
Wisconsin*	Both	Religious objection	If without photo, DL or ID card must be marked as not compliant with REAL ID standards
	Both	Out of state	Must get license with photo within 30 days of returning to the state
	Both	Temporary disfigurement	Must apply for a duplicate license when the reason for the exemption no longer exists

* REAL ID compliant as of September 2013

^{a)} Georgia, which does not provide for exemption from photo requirements, also says in regulation that a photograph can be taken by an employee of the same gender as the applicant and in a private location.

¹¹ These statutes and regulations are summarized: Alaska: AS § 28.15.111; Arkansas: A.C.A. §27-16-801; Illinois: Title 92, § 1030.90, 15 ILCS 335/4; Indiana: IC 9-24-11-5; Kentucky: KRS §186.412; Minnesota: M.S.A. §171.071, Minnesota Rules, part 7410.1810; Missouri: V.A.M.S. 302.181; Nebraska: Neb.Rev.St. §60-4,119; Oregon: O.R.S. §801.110, OAR 735-062-0120; Pennsylvania: 67 Pa. Code § 73.3, 67 Pa. Code §91.4; Wisconsin: W.S.A. 343.14, W.S.A. 343.50, Wis. Adm. Code Trans 102.03.

A Congressional Research Service analysis of religious exemptions to photo ID requirements¹² states, “The government must prove that the individual's religious exercise is not substantially burdened by the requirement or that the state's interest outweighs the burden under the standard imposed by the relevant law under which the photo requirement is challenged. Particularly after 9/11, courts appear more likely to apply the photo requirement strictly, without exemption, if the government's compelling interest is directly related to security concerns. . . . [C]ases are very fact-specific and the outcome may depend on nuanced details of the individual's religious beliefs or the government's specific purposes.”

Requirements for photographs on driver's licenses for driving purposes may differ from those for voting purposes in the states that require photographic identification for voting or for concealed carry of handguns. Here are two examples:

- Pennsylvania's voter ID law specifically allows an elector who has a religious objection to being photographed to use a valid-without-photo driver's license or valid-without-photo ID card issued by the Pennsylvania Department of Transportation. Pennsylvania law also specifically allows a seller of firearms to accept certain valid-without-photo documents approved by the Pennsylvania State Police.
- An applicant for a Firearm Owner's Identification Card in Illinois who has a religious objection to being photographed must submit fingerprints to the Department of State Police.

Driving Privileges and ID Cards for Those Who Cannot Prove Lawful Presence

As of early October 2013, 11 states have enacted law to authorize driver's licenses, ID cards, or

both to those who do not provide satisfactory documentary evidence that the applicant has lawful immigration status or a valid Social Security number. Three of those states had authorization in place before 2013:¹³

- In 1999, **Washington** State amended its driver's license and ID card proof of identity statute (RCW 46.20.035) to specify that only a driver's license or ID card issued to an applicant providing certain types of proof of identity is valid for identification purposes and, if the applicant is unable to prove his or her identity, must be labeled “not valid for identification purposes.” Washington regulations list documents that can be used to prove identity, such as a federal or state agency identification card, a U.S. passport, a foreign passport accompanied by U.S. Citizenship and Immigration Services documentation, and a military identification card that contains the signature and a photograph of the applicant. Applicants who wish to provide other types of identification may request Department of Licensing review. A 2011 attempt to amend the law failed because, according to a report for another legislature, “legislators (1) believed that additional verification measures required to end licensing for undocumented immigrants would have cost as much as \$1.5 million and (2) were worried about the state's ability to harvest apples if undocumented immigrants could not drive to the orchards.”¹⁴
- The 2003 **New Mexico** Legislature added this sentence to its main statute regarding applications for driver's licenses (NMSA 66-5-9): “For foreign nationals applying for driver's licenses the secretary shall

¹² Brougher, Cynthia. *Legal Analysis of Religious Exemptions for Photo Identification Requirements*. R45015, Congressional Research Service, 5 September 2012. www.fas.org/spg/crs/misc/R45015.pdf

¹³ According to a May 2013 report to Connecticut legislators, California, Hawaii, Maryland, Maine, Michigan, Oregon, and Tennessee are “states that previously permitted undocumented immigrants to drive” but “stopped doing so between 2003 and 2010 for various reasons; these reversals resulted from both legislative and executive actions.” *Issuance of Driver's Licenses to Undocumented Immigrants*, Connecticut General Assembly Office of Legislative Research Report 2013-R-0194, May 29, 2013.

¹⁴ *Id.*

accept the individual taxpayer identification number as a substitute for a social security number regardless of immigration status.” Earlier legislation had included, “The secretary is authorized to establish by regulation other documents that may be accepted as a substitute for a social security number.” Various bills have been introduced to amend these and other provisions.

- In 2005, the **Utah** Legislature modified its Public Safety Code to prohibit issuing a driver's license to any person who is not a Utah resident and to offer a driving privilege card to those without Social Security numbers (Utah Statutes 53-3-204 *et seq.*). A driving privilege card is to be clearly distinguishable from a driver's license and include a notice to the effect that the card is not valid for identification; government entities may not accept the card as identification. A “driving privilege card” expires each year on the person's birthday. An applicant for a driving privilege card is required to provide fingerprints as well as a photograph; the state's Bureau of Criminal Identification must check the fingerprints against state and regional criminal databases and notify the federal Immigration and Customs Enforcement Agency if the person has a felony in the person's criminal history record.

Nine states authorized driving privileges for certain undocumented residents in 2013:

<u>State</u>	<u>Bill; Session Law</u>	<u>Date Became Law</u>	<u>Implementation Date</u>
California (CA)	AB 60; Ch. 524	Oct. 3, 2013	Jan. 1, 2015
Colorado (CO)	SB 13-251; Ch. 402	June 5, 2013	Aug. 1, 2014
Connecticut (CT)	HB 6495; P.A. 13-89	June 6, 2013	Jan. 1, 2015
Illinois (IL)	SB 957; P.A. 097-1157	Jan. 22, 2013	Nov. 28, 2013
Maine (ME)	H.P. 980; Ch. 163	May 29, 2013	Oct. 9, 2013
Maryland (MD)	SB 715; Ch. 309	May 2, 2013	Jan. 1, 2014
Nevada (NV)	SB 303; Ch. 282	May 31, 2013	Jan. 1, 2014
Oregon (OR)	SB 833; Ch. 48	May 1, 2013	Jan. 1, 2014
Vermont (VT)	S. 38; Act 074	June 5, 2013	Jan. 1, 2014

The provisions in the bills authorizing driver's licenses, ID cards, or both for those who cannot prove lawful presence vary in many ways. Maine's new law only adds phrases to existing law to exempt an applicant for renewal of a noncommercial driver's license or non-driver ID card from requirements to prove lawful presence if the applicant has continuously held the driver's license or ID card since December 31, 1989, or was born before December 1, 1964. Several states differentiate between a driver's license, which can be used to prove identity, and the new document, calling it a “driving privilege card,” “operator's privilege card,” or similar term. (The term “driver's license” is used in this article and is used to refer to all types, including learner permits.) The cards will include identity features such as full name, birth date, signature, and photo, and all 2013 bills except Maine's included these provisions:

- An applicant must provide proof of identity;
- An applicant must provide proof of residency within the state; and
- An applicant for any driver's license must meet all additional requirements for driving, such as passing driving skills tests and maintaining vehicle insurance.

The following tables illustrate ways in which the new laws except Maine's are similar and dissimilar; they greatly simplify the bills' provisions and do not include all requirements. **The tables are based on the bills listed above only and not on the entirety of each state's laws.**

Comparisons of New Driver's License and ID Laws								
Authorization to issue driver's license or ID card								
Driver's license authorized; applicant must meet all additional requirements for a driver's license	CA	CO	CT	IL	MD	NV	OR	VT
Not applicable to a commercial driver's license	CA	CO			MD	NV	OR	
ID card authorized	CA	CO			MD			VT
License or ID card must be easily distinguishable	CA	CO	CT		MD	NV	OR	VT
Identity may be proven with these documents listed in the bills:								
Passport	CA	CO	CT			NV	OR	VT
Consular identification document	CA	CO	CT	IL		NV	OR	VT
Birth certificate	CA		CT			NV		VT
Marriage license	CA		CT					VT
Foreign voter registration or voter ID document	CA		CT					
Foreign driver's license	CA		CT					
U.S. application for asylum	CA							
Official school transcript	CA		CT					
Military identification		CO				NV		
Other ^{a)}	CA		CT				OR	VT
Residency may be proven with these documents listed in the bills:								
Home utility bill	CA		CT			NV		
Lease or rental document	CA		CT			NV	OR	
Deed or title to real property	CA						OR	
Property tax bill or statement	CA		CT					
Income tax return	CA	CO			MD		OR	
Bank or credit card statement			CT			NV		VT
Pay stub			CT			NV		
Insurance document			CT			NV		VT
Medical bill			CT			NV		VT
Other ^{b)}	CA	CO	CT	IL		NV	OR	VT
Additional eligibility provisions in the bills:								
Available to those who can and those who cannot prove lawful presence						NV		VT
Applicant must sign an affidavit stating the applicant is ineligible for a Social Security number	CA				MD		OR	
Applicant must sign an affidavit that the applicant is unable to submit satisfactory proof that the applicant's presence in the U.S. is authorized under federal law	CA		CT					
Applicant may not have been convicted of any felony in the state			CT					
Limitations on uses specified in the bills; the driver's license or ID card may <u>not</u> be used for:								
Official federal purposes	CA	CO	CT		MD			VT
Proof of identity				IL				
Evidence of citizenship or immigration status	CA							
Eligibility for public benefits	CA	CO				NV		

Comparisons of New Driver's License and ID Laws								(Continued)
Limitations on uses specified in the bills; the driver's license or ID card may <u>not</u> be used for:								
Voting		CO	CT					
Eligibility for any license						NV		
Purchasing a firearm					MD			
Enforcement of immigration laws	CA	CO				NV		
Other ^{c)}	CA						OR	
Card must include a statement about its acceptable uses	CA	CO	CT	IL	MD			VT
<p>^{a)} California's and Illinois' bills state additional acceptable documents for proving identity will be specified in regulations. Connecticut lists a passport, consular identification document, or consular report of birth as primary proof of identity and others, including a baptismal certificate, as secondary. Connecticut requires two forms of primary proof of identity or one form of primary proof and one form of secondary proof. Nevada requires an applicant provide two types of proof of identity. It also allows as proof a driver's license issued by another state. Nevada's Department of Motor Vehicles, Oregon's Department of Transportation, and Vermont's Department of Motor Vehicles Commissioner may define additional types of acceptable documentation.</p>								
<p>^{b)} California's bill states additional types of acceptable documents will be specified in regulation. Colorado specifies the income tax return must contain a federal taxpayer ID number, and it requires both an affidavit and a tax return. Colorado also specifies residency standards that meet REAL ID Act requirements and that the applicant must affirm the applicant has or will apply for lawful residency status when eligible. Connecticut's list of proof of residency documents also includes a Medicaid or Medicare statement, a Social Security benefits statement, postmarked mail, and an official school record showing enrollment. Illinois' bill states a list of acceptable residency documents is to be established in rules and regulations. Nevada requires an applicant provide two types of proof of residency; its Department of Motor Vehicles may approve additional types of documents. Oregon's Department of Transportation and Vermont's Department of Motor Vehicles Commissioner may define additional types of acceptable documentation. Vermont's list of other acceptable documentation includes mail, vehicle title or registration, W-2 or similar tax document, and a document from an educational institution.</p>								
<p>^{c)} California's bill states the card may not be used as proof of eligibility for employment or voter registration. The bill also makes it a violation of law to discriminate against an individual who holds this type of card. Oregon also allows its driver card to identify the person as an anatomical donor, emancipated minor, or veteran; to identify the person for purposes of civil action judgments, liens, and support payments; and to aid a law enforcement agency in identifying a missing person.</p>								

Also, the Governor of Puerto Rico signed a bill in August 2013 to allow undocumented immigrants and migrant workers living in Puerto Rico to apply for temporary driver's licenses that would be easily distinguishable from those issued to citizens, beginning in late 2014. An applicant will be required to provide proof of identity and pass standard driving and traffic-rules tests.⁸

Opponents and proponents of the new laws have made various points on their desirability:

Pros	Cons
<ul style="list-style-type: none"> ● Roads would be safer because those driving would have to pass written and driving tests. ● Databases containing information about everyone who drives could be important law enforcement tools. ● Such documents would allow these drivers to get vehicle insurance. ● Such licenses may be made available also to those who do not wish to share the information required to get a license that complies with federal standards. 	<ul style="list-style-type: none"> ● Driving is a privilege that should be extended only to those here legally. ● Documents from other countries provided for proof of identity are difficult to verify. ● Driving privileges may attract illegal immigrants to a state in which such a license is offered. ● A distinguishable license for undocumented immigrants may encourage profiling and discrimination.

⁸ National Immigration Law Center; various new reports.

For further information please contact:

Jill Shelley, Principal Analyst
Jill.Shelley@klrd.ks.gov

Joanna Wochner, Research Analyst
Joanna.Wochner@klrd.ks.gov

Kansas Legislative Research Department
 300 SW 10th Ave., Room 68-West, Statehouse
 Topeka, KS 66612
 Phone: (785) 296-3181
 Fax: (785) 296-3824