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DRIVING PRIVILEGES AND IDENTIFICATION CARDS IN OTHER STATES FOR THOSE WHO CANNOT PROVE LAWFUL PRESENCE

Kansas does not provide driving credentials for those who cannot prove lawful presence in the United States. Other states identified below have authorized such credentials, for reasons including allowing those who cannot prove lawful presence to obtain vehicle insurance.

Kansas Law Requires Citizenship or Lawful Presence for a Driver's License

Kansas law has, since 2000, provided that an applicant for a driver's license or instruction permit must be lawfully present in the United States, with language in KSA 2015 Supp. 8-237 and 8-240. Since 2007, the relevant language in KSA 8-240(b) has read this way:

- (2) The division shall not issue any driver's license or instruction permit to any person who fails to provide proof that the person is lawfully present in the United States. Before issuing a driver's license or instruction permit to a person, the division shall require valid documentary evidence that the applicant: (A) Is a citizen or national of the United States; (B) is an alien lawfully admitted for permanent or temporary residence in the United States; (C) has conditional permanent resident status in the United States; (D) has an approved application for asylum in the United States or has entered into the United States in refugee status; (E) has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the United States; (F) has a pending application for asylum in the United States; (G) has a pending or approved application for temporary protected status in the United States; (H) has approved deferred action status; or (I) has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States.
- (3) If an applicant provides evidence of lawful presence set out in subsections (b)(2)(E) through (2)(I), or is an alien lawfully admitted for temporary residence under subsection (b)(2)(B), the division may only issue a driver's license to the person under the following conditions: (A) A driver's license issued pursuant to this subparagraph shall be valid only during the period of time of the applicant's authorized stay in the United States or, if there is no definite end to the period of authorized stay, a period of one year; (B) a driver's license issued pursuant to this subparagraph shall clearly indicate that it is temporary and shall state the date on which it expires; (C) no driver's license issued pursuant to this subparagraph shall be for a longer period of time than the time period permitted by KSA 8-247(a), and amendments thereto; and (D) a driver's license issued pursuant to this subparagraph may be renewed, subject at the time of renewal, to

the same requirements and conditions as set out in this subsection (b) for the issuance of the original driver's license.¹

The Kansas Department of Revenue states it began utilizing the U.S. Citizenship and Immigration Services' Systematic Alien Verification for Entitlement Program in July 2011, to determine the status of temporary residents in the United States when such applicants apply for a Kansas driver's license, instruction permit, or non-driver identification card. The applicant also must prove residency in Kansas, as must any other applicant.

According to the U.S. Citizenship and Immigration Services, "An individual who has received deferred action is authorized by [the Department of Homeland Security (DHS)] to be present in the United States, and is therefore considered by DHS to be lawfully present during the period deferred action is in effect."² It defines deferred action as a "discretionary determination to defer a removal action of an individual as an act of prosecutorial discretion."

Various Other States Allow Driving Credentials for Those Who Cannot Prove Lawful Presence

As of mid-October 2016, 14 states, the District of Columbia, and Puerto Rico had 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 2013.³

- 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."⁴

1 Documents approved as proof of residency are listed on the Department of Revenue website <http://www.ksrevenue.org/dmvproof.html>.

2 <http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions>, accessed October 2016.

3 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. California, Maine, Maryland, and Oregon again enacted permissive laws in 2013.

- 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 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 but none have been enacted.
- 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; submit the fingerprints to national criminal records databases, including the Federal Bureau of Investigation’s Next Generation Identification system; 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 and two more adopted such measures in 2015:

State	Bill; Session Law	Date Became Law	Implementation Date
California (CA)	AB 60; Ch. 524	Oct 3, 2013	Jan 1, 2015
Colorado (CO)	SB 13-251; Ch. 402	Jun 5, 2013	Aug 1, 2014
Connecticut (CT)	HB 6495; P.A. 13-89	Jun 6, 2013	Jan 1, 2015
Delaware (DE)	SB 59, 80:67	Jun 30, 2015	Dec 27, 2015
Hawaii (HI)	HB 1007; Act 172	Jul 2, 2015	Jan 1, 2016
Illinois (IL)	SB 957; P.A. 097-1157	Jan 28, 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	Jun 5, 2013	Jan 1, 2014

* The implementation date for Oregon’s law is stricken because, *via* the referendum process, the law was placed on the general ballot of the November 2014 election, where it was rejected by voters.⁵

4 *Ibid.*

5 http://ballotpedia.org/Oregon_Alternative_Driver_Licenses_Referendum_Measure_88_%282014%29.

The District of Columbia authorized a limited purpose driver's license, permit, or ID card early in 2014, with D.C. Law 20-62 (D.C. Code 50-1401.05); those credentials have been available since May 1, 2014.

An amendment to Puerto Rico's Motor Vehicle and Traffic Law (9 LPRA Sec. 5078) approved in June 2013 also allows driver's licenses to certain undocumented residents, effective August 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 2013 amendments exempt an applicant for renewal of a noncommercial driver's license or non-driver ID card from requirements to prove lawful presence only 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 memorandum to refer to all types, including learner permits.) The driver's licenses include identity features such as full name, birth date, signature, and photo, and all 2013 and 2015 bills except Maine's⁶ 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 2013 and 2015 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. Also note that Oregon's bill was rejected by voters.**

Comparisons of New Driver's License and ID Laws												
Driver's license, ID card, or both authorized in the bills:												
Driver's license authorized; applicant must meet all additional requirements for a driver's license	CA	CO	CT	DE	DC	HI	IL	MD	NV	OR	PR	VT
Not applicable to a commercial driver's license	CA	CO		DE				MD	NV	OR		
ID card authorized	CA	CO			DC			MD				VT
License or ID card must be easily distinguishable	CA	CO	CT	DE		HI		MD	NV	OR	PR	VT
Identity may be proven with these documents listed in the bills:												

6 South Carolina reportedly has a photo ID requirement but an alternative is offered for people with a "reasonable impediment" to obtaining a photo ID, according to NCSL. South Carolina's law also has been challenged in court.

Passport	CA	CO	CT	DE		HI			NV	OR	PR	VT
Consular identification document	CA	CO	CT			HI	IL		NV	OR	PR	VT
Birth certificate	CA		CT	DE		HI			NV			VT
Marriage license	CA		CT			HI						VT
Foreign voter registration or voter ID document	CA		CT			HI						
Foreign driver's license	CA		CT			HI						
U.S. application for asylum	CA					HI						
Official school transcript	CA		CT			HI						
Military identification		CO							NV			
Other ^(a)	CA		CT	DE	DC					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		DE		HI		MD		OR		
Bank or credit card statement			CT						NV			VT
Pay stub			CT			HI			NV			
Insurance document			CT						NV			VT
Medical bill			CT						NV			VT
Other ^(b)	CA	CO	CT		DC		IL		NV	OR		VT
Additional eligibility provisions in the bills:												
Available to those who can and those who cannot prove lawful presence				DE	DC	HI			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									
Criminal history required ^(c)			CT	DE								
Limitations on uses specified in the bills; the driver's license or ID card may NOT be used for:												
Official federal purposes	CA	CO	CT		DC	HI		MD			PR	VT
Proof of identity				DE			IL					
Evidence of citizenship or immigration status	CA				DC							
Eligibility for public benefits	CA	CO				HI			NV			
Voting ^(d)		CO	CT			HI						

Eligibility for any license									NV				
Purchasing a firearm									MD				
Enforcement of immigration laws	CA	CO				DC	HI			NV			
Other ^(e)	CA										OR		
Card must include a statement about its acceptable uses	CA	CO	CT					IL	MD				VT

(a) California's, the District of Columbia's, and Illinois' bills state additional acceptable documents for proving identity will be specified in regulations. The District of Columbia's bill states proof of identity will be defined by rule; those rules in general specify the types of documents listed in the table. 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. Delaware also lists school identification that includes a photograph and allows other documentation to be evaluated on a case-by-case basis. Hawaii's bill lists documents that may be used to establish identity and residency and it allows the director of transportation to designate other proof of residency. Additional types of acceptable documents listed in Hawaii's law are school or college identification card with full name and photograph, a valid identification card for health benefits or a social services program, a current voter registration card issued by the state, and a Social Security card. 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 and Vermont's Department of Motor Vehicles Commissioner may define additional types of acceptable documentation; Oregon's Department of Transportation also would have defined acceptable documentation.

(b) The District of Columbia's bill states proof of residency will be defined by rule; those rules specify documents such as those listed. 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 could have 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.

(c) Connecticut states an applicant may not have been convicted of any felony in the state. Delaware requires the applicant to submit fingerprints and other necessary information for a criminal background check. Utah has a similar requirement; see above.

(d) KSA 2015 Supp. 25-2908(h) includes a driver's license as a form of identification that can be used for voting.

(e) California's and Hawaii's bills state the card may not be used as proof of eligibility for employment or voter registration. The bills also make it a violation of law to discriminate against an individual who holds this type of card. Oregon also would have allowed 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.

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

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<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 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.

In findings presented in the bill Hawaii enacted in 2015, the Hawaii Legislature further states the requirements of the REAL ID Act “unduly burden elderly residents, houseless individuals, undocumented immigrants, lawfully present nonimmigrants, and survivors of gender-based violence.... The legislature further finds that the lack of access to driver’s licensure as a result of restrictive identification requirements poses a serious threat to public safety. Allowing... driver’s licenses will improve public safety by ensuring that all drivers are tested for driving skills and able to acquire motor vehicle insurance.”⁷

Implementation

No formal study of the effects of these changes to eligibility for driving privileges was found, but media and driver license agency reports provided the following information about implementation to date.⁸

Some states saw high initial demand. California issued 605,000 “AB 60” licenses in 2015, approximately half of all new licenses; 400,000 of the AB 60 licenses were issued in the first 6 months.⁹ The state added 1,000 temporary employees, which it had reduced to 200 by the 2016-2017 fiscal year.¹⁰ Connecticut had estimated 55,000 applications over 3 years, but

7 The REAL ID Act of 2005 sets standards for proof of identity documents used for federal purposes such as entering secure federal facilities. Answers to frequently asked questions are available from the Department of Homeland Security at <https://www.dhs.gov/secure-drivers-licenses>.

8 All sources for this section were accessed during the week of October 10, 2016.

9 “DMV AB 60 Statistics for December 2015,” California Department of Motor Vehicles, January 22, 2016, https://www.dmv.ca.gov/portal/dmv/detail/pubs/newsrel/newsrel16/2016_03.

10 “There’s Been a Boom in Driver’s Licenses Issued to Immigrants Here Illegally,” Los Angeles Times, February 8, 2016, <http://www.latimes.com/local/california/la-me-0208-immigrant-drivers-licenses-20160208-story.html>.

there had been approximately that many in the first 6 months.¹¹ Delaware had approximately 4,600 applicants in the first 6 months.¹² Illinois reports showed nearly 90,000 had appointments or had already received a license in the first approximately 7 months of that state's program.¹³ Nevada reported 25,910 driver authorization cards were issued in its first year of implementation.¹⁴ New Mexico issued 4,577 licenses to foreign nationals in 2014, down each year from more than 15,000 in 2010.¹⁵ Utah reported 36,921 driving privilege cards issued or renewed in 2012, down from 43,000 in the peak year of 2008.¹⁶ (Utah's driving privilege cards must be renewed each year.)

Some states slowed applications by requiring appointments for these applicants; problems were reported. Colorado limited the number of offices able to process such applications first to only one, now three (in Denver, Colorado Springs, and Grand Junction) after a legislative compromise.¹⁷ The Colorado Attorney General revealed in early 2016 it was investigating reports of people scheduling the free appointments but then selling those appointment times, as some applicants reported being unable to schedule appointments despite repeated attempts.¹⁸ Illinois officials also reported an "appointments for sale" scheme, successful because many hoping to apply were unable to schedule appointment times through the official process.¹⁹ However, as of July 1, 2016, only 2 of 35 temporary visitor driver's license facilities in Illinois were processing applications without appointments being required.²⁰

11 "CT DMV Shutdown to Start August 11, 'Drive-Only' Program Causing Delays," WTNH, August 6, 2015, <http://wtnh.com/2015/07/22/connecticut-dmv-announces-one-week-closure/>.

12 "4,600 Undocumented Immigrants Sign Up for Delaware Driver's License," Delmarva Public Radio, July 18, 2016, <http://delmarvapublicradio.net/post/4600-undocumented-immigrants-sign-delaware-drivers-license#stream/0>.

13 "Illegal Immigrant License Logjam, Schemes Uncovered by I-Team," ABC 7 News, July 22, 2014, <http://abc7chicago.com/politics/i-team-uncovers-illegal-immigrant-license-logjam-schemes/210094/>.

14 "Nearly 26,000 Undocumented Nevada Residents Got Driving Cards in 2014," Sierra Sun, January 26, 2015, <http://www.sierrasun.com/news/local/nearly-26000-undocumented-nevada-residents-got-driving-cards-in-2014/>.

15 "Immigrant Driver's Licenses in NM Drop to Record Low," Albuquerque Journal, July 19, 2015, <https://www.abqjournal.com/600980/immigrant-drivers-licenses-in-nm-drop-to-record-low.html>.

16 "Utah Issues Fewer Driving Privilege Cards," The Salt Lake Tribune, January 26, 2013, <http://archive.sltrib.com/story.php?ref=sltrib/politics/55701126-90/cards-driving-illegal-immigrants.html.csp>.

17 "Colorado Immigrant Driver's Licenses Deal Goes to Governor," Associated Press, March 23, 2015; in various publications; also see "CO-RCSA SB251 Driver's Licenses and IDs," Colorado Department of Revenue Division of Vehicles, <https://www.colorado.gov/pacific/dmv/co-rca-sb251-drivers-licenses-and-ids>.

18 "Attorney General Cynthia H. Coffman Warns Immigrants About Persons Illegally Selling Driver's License Appointments," January 7, 2016, <https://www.stopfraudcolorado.gov/about-consumer-protection/press-releases/2016-01-07-000000/attorney-general-cynthia-h-coffman-warns>.

19 "Illegal Immigrant License Logjam, Schemes Uncovered by I-Team," ABC 7 News, July 22, 2014, <http://abc7chicago.com/politics/i-team-uncovers-illegal-immigrant-license-logjam-schemes/210094/>.

20 "Temporary Visitor Driver's License (TVDL) for Undocumented (Non-Visa Status) Individuals," Office of the Secretary of State, <http://www.cyberdriveillinois.com/departments/drivers/TVDL/home.html>.