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Senate Bill 962 (Substitute S-1 as passed by the Senate)
Senate Bill 963 (Substitute S-1 as passed by the Senate)
Senate Bill 1075 (as passed by the Senate)
Sponsor: Senator Alan Sanborn (S.B. 962 & 1075)
Senator Tony Stamas (S.B. 963)
Committee: Transportation

Date Completed: 2-14-08

RATIONALE

On January 22, 2008, in compliance with a recent Attorney General opinion, the Secretary of State began requiring an applicant for an original driver license or State ID card to demonstrate that he or she is a lawful resident of the United States. Attorney General Opinion No. 7210, issued on December 27, 2007, concluded in part that, "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...". The opinion overturned a 1995 opinion of then-Attorney General Frank Kelley, which held that the Department of State could not refuse a driver license to an otherwise qualified person solely based on his or her status as an illegal alien. (For a description of those opinions, please see **BACKGROUND**.)

Many international corporations, immigration lawyers, and others are concerned that the new Secretary of State policy prevents legal immigrants who are not considered permanent residents from getting official identification. Individuals may be considered temporary residents for immigration purposes, even if they have been in this country for many years. These individuals include employees of international corporations, workers in the United States on work-related visas, physicians who have been allowed into the country to offer medical care in underserved areas, and others. Because a driver license is one of the most commonly accepted forms of identification in the U.S., there is widespread concern that the new restrictions will pose a severe hardship for those

individuals, who, in addition to being unable to drive, might have trouble cashing checks, securing loans, or conducting other routine business. In addition, there has been some confusion over the interpretation of the Attorney General's opinion, and it has been suggested that the requirements for a driver license and official State identification should be clarified in statute.

In a related matter, some have recommended that the revisions should incorporate the requirements of the Federal REAL ID Act of 2005. That Act requires a state to comply with enhanced minimum standards for driver licenses and identification cards, in order for the state's licenses or ID cards to be recognized for Federal purposes, such as boarding an airplane or entering a Federal building. The original deadline for a state to comply with the Act was May 11, 2008, although Michigan has applied for and received a waiver of those requirements until December 31, 2009, according to the Secretary of State. (Please see **BACKGROUND** for a description of the requirements under the REAL ID Act).

CONTENT

Senate Bills 962 (S-1) and 963 (S-1) would amend the Michigan Vehicle Code and Public Act 222 of 1972 (which provides for an official State personal identification card), respectively, to do the following:

- Require an applicant for a driver license or official State ID card to provide documents demonstrating U.S. citizenship or other lawful status in the U.S., along with a photographic identity document, a birth certificate, or other nonphotographic document.
 - Permit the Secretary of State (SOS) to issue a limited-term license or ID card to an applicant presenting certain documents to demonstrate lawful status, including a nonimmigrant visa, an approved application for asylum, and an application for temporary protected status.
 - Provide that a limited-term license or ID card would be valid only during the time that the applicant was authorized to be in the U.S., or if there were no definite end to the period of stay, for one year.
 - Require the SOS to use electronic systems to verify an applicant's source documents, identity information, and legal presence in the U.S. as those systems became available, and to use any other methods to verify that information as prescribed by the SOS.
 - Prohibit the SOS from accepting any foreign document, other than an official passport, to satisfy the application requirements.
 - Require a person born after December 1, 1964, to obtain an original license or official State ID card by December 1, 2014, and a person born on or before that date to obtain an original license or ID card by December 1, 2017.
 - Require an applicant for a renewal, duplicate, or reissued license or ID card to appear personally at a branch office of the SOS if he or she had a limited-term license or ID card or if there had been a material change in the applicant's personal information since the issuance of his or her most recent license or ID card.
 - Require a license or official State ID card to contain physical security features to prevent tampering, counterfeiting, or duplication.
 - Require a digitized license or ID card to have a bar code containing defined minimum data elements, including personal identifying information, and the expiration date and inventory control number of the card or license.
 - Provide that a person who gained access to, used, compiled, or maintained a database of electronically transferable information from the bar code of a license or ID card would be guilty of a felony.
 - Replace the current fees for an original or renewal license with higher maximum fees, and change the fee for a State ID card from \$10 to not more than \$20.
 - Require the revenue from the increase in driver license fees and all revenue from fees for State ID cards to be deposited into the Transportation Administration Collection Fund, rather than the General Fund, to be used for administration and enforcement of the new requirements under the bills.
 - Require the State to enter into a memorandum of understanding with the U.S. Department of Homeland Security to use an automated system to verify the legal status of a person other than a U.S. citizen applying for a license or official State ID card.
 - Permit the State to enter into the interstate compact known as the "driver license agreement".
 - Eliminate a special restricted license to operate a moped, and instead permit a person 15 years of age or older to operate a moped if he or she had a valid operator's or chauffeur's license or level one graduated license, or if he or she had completed a moped training course approved by the SOS.
- Senate Bill 1075** would amend the Code of Criminal Procedure to include within the sentencing guidelines the improper access, use, compilation, or maintenance of a database of information from the bar code of a driver license or official State ID card. The offense would be a class E felony against public trust, punishable by up to five years' imprisonment.

Senate Bills 962 (S-1) is tie-barred to Senate Bills 963 and 1075. Senate Bill 963 (S-1) is tie-barred to Senate Bill 962.

Senate Bill 1075 is tie-barred to Senate Bills 962 and 963.

Senate Bills 962 (S-1) and 963 (S-1) would take effect on January 1, 2009, except that under Senate Bill 962 (S-1), the provisions requiring additional documents to be presented by an applicant for a license and the definition of "resident" would take effect when the bill was enacted. Under Senate Bill 963 (S-1), provisions amending certain definitions would take effect on the date the bill was enacted.

Senate Bills 962 (S-1) and 963 (S-1) are described in detail below.

Required Documents

Under the bills, before issuing an operator's license, a chauffeur's license, or an official State ID card to an applicant, the SOS would have to require and the applicant would have to produce documentary evidence as determined by the SOS showing that one or more of the following applied to the applicant:

- The applicant was a U.S. citizen.
- The applicant was an alien lawfully admitted for permanent or temporary residence in the U.S.
- The applicant had conditional permanent residence status in the U.S.

In addition, an applicant for an operator's license or a chauffeur's license would have to produce documentary evidence showing that he or she was a resident of the State.

If an applicant presented evidence of the following, the SOS could issue only a limited-term operator's or chauffeur's license or a limited-term official State ID card to the applicant:

- The applicant had a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the U.S.
- The applicant had an approved application for asylum in the U.S.
- The applicant had entered the U.S. in refugee status.
- The applicant had a pending or approved application for temporary protected status in the U.S.
- The applicant had approved deferred action status.

- The applicant had a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the U.S. or conditional permanent residence status in the U.S.

A limited-term license or limited-term official State ID card would be valid only during the time that the applicant was authorized to stay in the U.S. or, if there were no definite end to the period of authorized stay, for one year.

A limited-term license or official State ID card would have to indicate that it was valid for a limited term and would have to state the date on which it expired.

A limited-term license or official State ID card could be renewed only upon presentation of valid documentary evidence that the status by which the applicant qualified for the limited-term license or ID card had been extended by the U.S. Secretary of Homeland Security.

Currently, an applicant for an operator's license, chauffeur's license, or official State ID card must supply a birth certificate attesting to his or her age or other sufficient documents or identification as the SOS may require.

Under the bills, an applicant would have to supply a photographic identity document, a birth certificate, or other nonphotographic identity document and other sufficient documents or identification as required by the SOS. These documents would have to provide the applicant's full legal name and date of birth, as well as his or her address and residency, and demonstrate that the applicant was a U.S. citizen, was an alien lawfully admitted for permanent or temporary residence in the U.S., or had conditional permanent resident status in the U.S. For an applicant for an official State ID card, the documents also would have to include his or her social security number (SSN).

If the applicant's full legal name differed from the name that appeared on an identity document presented under those provisions, the applicant would have to present documents issued by a court, government agency, or other entity as determined by the SOS as evidence of his or her name change.

The Vehicle Code prohibits the SOS from issuing a license to a nonresident of the State, including a foreign exchange student. Under Senate Bill 962 (S-1), that provision would apply unless the individual otherwise was eligible under the bill. The bills also would prohibit the SOS from issuing a license or an official State ID card to a person who was not a U.S. citizen, unless he or she otherwise was eligible under the bills.

Currently under the Vehicle Code, "resident" means every person who resides in a settled or permanent home or domicile with the intention of remaining in the State. A person who obtains employment in the State is presumed to have the intention of remaining in the State. Under Senate Bill 962 (S-1), "resident" would mean every person who resided in the State and established that he or she was legally present in the United States.

Under Senate Bill 963 (S-1), "resident" would mean a person who established that he or she was legally present in the United States.

Document Verification; Retention; Security

Under the bills, the SOS would have to use electronic systems to verify source documents, identity information, and legal presence in the U.S. as those systems became available, and prescribe and use any other methods to verify source documents, identity information, and legal presence in the U.S. as prescribed by the SOS. The Secretary could not accept a foreign document, other than an official passport, to satisfy the application requirements.

The SOS would have to use technology to capture digital images of identity source documents so that the images were capable of being retained in electronic storage in a transferable format. The SOS would have to retain paper copies of source documents presented by an applicant to obtain an operator's license, chauffeur's license, or official State ID card for at least seven years, or images of those source documents for at least 10 years.

The SOS would have to establish an effective procedure to confirm or verify a renewing applicant's information for an operator's license, chauffeur's license, or official State ID card. (Under the bills,

"verify" would mean to follow procedures established by the SOS to authenticate documents by determining whether the source document was genuine and had not been altered and determining whether the identity data contained on the document were valid.)

The SOS also would have to verify with the Social Security Administration a Social Security number presented by an applicant for a license or official State ID card, using the full SSN, or confirm the applicant's ineligibility for an SSN.

The SOS would have to refuse to issue an operator's license, chauffeur's license, or official State ID card to a person holding a license or official ID card issued by another state without confirmation that the person was terminating or had terminated the license or ID card issued by the other state.

The SOS would have to do all of the following:

- Ensure the physical security of locations where operator's licenses, chauffeur's licenses, and official State ID cards were produced and the security of document materials and papers from which licenses and ID cards were produced.
- Subject all those authorized to manufacture or produce licenses or official State ID cards and all those with the ability to affect the identity information appearing on operator's licenses, chauffeur's licenses, or official State ID cards to appropriate security clearance requirements.
- Establish fraudulent document recognition training programs for appropriate employees engaging in the issuance of operator's and chauffeur's licenses and official State ID cards.

Original License & Renewals

A person born after December 1, 1964, would have to obtain an original license or official State ID card under the bills on or before December 1, 2014.

A person born on or before December 1, 1964, would have to obtain an original license or official State ID card by December 1, 2017.

Under the bills, an applicant who sought to obtain a renewal, duplicate, or reissued operator's license, chauffeur's license, or official State ID card would have to appear personally at a branch office of the SOS if he or she possessed a limited-term license or official State ID card, or if there had been a material change in the applicant's personal information since issuance of the most recently issued license or ID card. All material changes would have to be established by presentation of an original source document as prescribed by the SOS. (Under these provisions, "material change" would mean any change to the applicant's personal information. A change of address of principal residence would not constitute a material change.)

Currently under the Vehicle Code, the SOS may issue a renewal operator's or chauffeur's license for one additional four-year period by mail or by other methods prescribed by the SOS, except as otherwise provided. Public Act 222 also permits a person to apply for a renewal of an official State ID card by mail or by other methods prescribed by the SOS, except as otherwise provided. Under the bills, the SOS could allow a person born on or before December 1, 1964, to renew his or her operator's license, chauffeur's license, or official State ID card for an additional four-year period.

Use of Source Documents

Currently, the SOS may disclose information in a record maintained under the Vehicle Code or Public Act 222 only under certain circumstances, including the following:

- For use by a Federal, State, or local governmental agency, including a court or law enforcement agency, in carrying out the agency's functions, or by a private person or entity acting on behalf of a governmental agency in carrying out its functions.
- For any use by an individual requesting information pertaining to himself or herself or requesting in writing that the SOS provide information pertaining to himself or herself to the individual's designee.

The bills also would permit copies or images of source documents retained by the SOS under the bills to be used and disclosed for those purposes.

Under Senate Bill 963 (S-1), the SOS could not disclose an SSN obtained from an applicant for an official State ID card except for the following purposes:

- Compliance with 49 USC 31301 to 31317 (which deals with Commercial Motor Vehicle Operators) and regulations and rules related to Public Act 222.
- To carry out the purposes of Section 466(a) of the Social Security Act (which provides for enforcement of child support payments), in connection with matters relating to paternity, child support, or overdue child support.
- To check an applicant's driving record through the national driver register and the commercial driver license information system when issuing a license under the Act.
- With the Department of Community Health, for comparison with vital records maintained by that Department under Part 28 (Vital Records) of the Public Health Code.
- As otherwise required by law.

The SOS could not display a person's SSN on the person's personal ID card. A requirement to include an SSN on an application would not apply to an applicant who demonstrated that he or she was exempt under law from obtaining an SSN.

(These provisions are similar to current provisions in the Vehicle Code, regarding the disclosure of an SSN obtained from an applicant for a operator's or chauffeur's license.)

Religious Exemption

Under the Vehicle Code, a requirement to include an SSN on an application does not apply to an applicant who for religious convictions is exempt under law from disclosure of his or her SSN under those circumstances. The SOS is required to inform the applicant of this possible exemption.

Senate Bill 962 (S-1) would remove the exemption.

Photograph & Signature

Currently, an applicant for an operator's license or chauffeur's license may have his or her image and signature captured or

reproduced when the application for the license is made. Senate Bill 962 (S-1) would require an applicant for a license to have a digital photograph of his or her image and signature to be made at that time, and would require the digital photographic image to appear on the applicant's operator's or chauffeur's license.

The bill would delete provisions under which a person required to maintain a valid license under the Sex Offenders Registration Act must have his or her image and signature captured or reproduced when the application for a license is made. The bill also would remove provisions requiring the SOS to acquire the equipment for capturing the images and signatures and permitting the SOS to furnish that equipment to a local unit authorized to license drivers.

Under the Vehicle Code and Public Act 222, the SOS may retain and use a person's image and signature only for programs administered by the SOS and, except as provided, may not use a person's image or signature unless the person grants written permission for that purpose to the SOS or specific enabling legislation permitting the use is enacted. A law enforcement agency of the State has access to information retained by the SOS under these provisions, and the information may be used for any law enforcement purposes unless otherwise prohibited by law.

The bills would delete those provisions, instead providing that a person's photographic image or signature could be used only as follows:

- By a Federal, State, or local governmental agency for a law enforcement purpose.
- By the SOS for a program administered by the SOS.
- By the SOS for a purpose other than that permitted above, if the person gave written permission.
- As necessary to comply with a law of the State or the United States.

The bills would require the SOS to forward to the Department of State Police the images of people required to be registered under the Sex Offenders Registration Act, once the Department of State Police had given the SOS an updated list of those people. (These provisions would replace

similar language currently in the Vehicle Code and Public Act 222.)

Information on License, ID Card

Currently, a license issued under the Code or an official State ID card issued under Public Act 222 must contain certain information, including the full name, date of birth, address of residence, height, eye color, sex, image, and signature of the licensee or applicant. The bills would revise those provisions to require the full legal name and would refer to a digital photographic image. The bills also would require a license or official State ID card to contain the date of transaction, the expiration date, and an indicator that the license or card was issued in compliance with the bills.

The Code provides that if a licensee is less than 18 years of age at the time the license is issued, the license must contain the date on which the licensee will become 18 and 21 years of age. If a licensee is at least 18 but less than 21 at the time the license is issued, the license must contain the date on which the licensee will become 21 years of age. Senate Bill 962 (S-1) would delete those provisions.

Under both bills, a license or an official State ID card would have to contain physical security features designed to prevent tampering, counterfeiting, or duplication of the license or ID card for fraudulent purposes.

Currently, a digitized license or an official State ID card may contain an identifier for voter registration purposes. The digitized license or ID card may contain information appearing in electronic or machine readable codes needed to conduct a transaction with the SOS. The voter identifier information on a digitized license or an official State ID card is limited to the person's driver license number or ID card number, birth date, expiration date, and other information necessary for use with electronic devices, machine readers, or automatic teller machines, and may not contain the person's name, address, driving record, or other personal identifier. The license or ID card must identify the encoded information.

The bills would delete those provisions, except the provision that a digitized license

or ID card may contain an identifier for voter registration purposes.

The bills would require a digitized license or official State personal ID card to contain information appearing in a two-dimensional bar code with defined minimum data elements. (Under Senate Bill 962 (S-1), "defined minimum data elements" would mean the expiration date, full legal name, date of transaction, date of birth, gender, address, the distinguishing number permanently assigned to the licensee, card design revision date, inventory control number of the physical document, state of issuance, and if applicable, a notation indicating that the operator's or chauffeur's license was a limited-term license.)

Except as otherwise provided, the bills would prohibit a person from gaining access to, using, compiling, or maintaining a database of electronically readable information from the two-dimensional bar code. A person who violated this prohibition would be guilty of a felony.

The prohibition would not apply to a person who gained access to, used, compiled, or maintained a database of electronically readable information from the bar code for use by a Federal, State, or local government agency in carrying out the agency's functions, or who gained access to or used the information only for the purpose of confirming the licensee's or applicant's identity or date of birth at the point of sale. Access or use under this provision would not permit compilation or maintenance of a database of electronically readable information from the bar code.

Under the Code and Public Act 222, highly restricted personal information may be used and disclosed only as expressly permitted by law. "Highly restricted personal information" means an individual's photograph or image, SSN, digitized signature, and medical disability information. The bills also would include source documents presented by an applicant to obtain an operator's license, chauffeur's license, or official State ID card.

License Fees

The Vehicle Code specifies fees that must accompany an application for an original or renewal operator's license or chauffeur's

license. Senate Bill 962 (S-1) would increase those fees as shown in Table 1.

Table 1

License	Current Fee	Fee Under Bill
Operator's license	\$25	Not more than \$35
Operator's license renewal	\$18	Not more than \$30
Duplicate operator's license	\$9	Not more than \$15
Chauffeur's license	\$35	Not more than \$45
Duplicate chauffeur's license	\$18	Not more than \$25
Minor's restricted license	\$25	Not more than \$35

The Code requires the SOS to deposit the fees in the State Treasury, to the credit of the State General Fund. The State Treasurer must deposit \$4 in the Traffic Law Enforcement and Safety Fund for each person examined for an original or renewal operator's or chauffeur's license, except that \$2 must be deposited in that Fund for each two-year operator's or two-year chauffeur's license.

Senate Bill 962 (S-1) would remove the provision relating to the two-year licenses.

The bill would require the revenue from the increase in fees to be appropriated to the Transportation Administration Collection Fund to be used by the SOS to pay the necessary expenses incurred by the SOS in the administration and enforcement of the bill.

ID Card Fee

Public Act 222 requires an applicant for an official State ID card to pay a fee of \$10, unless otherwise provided. Senate Bill 963 (S-1) instead would require a fee of not more than \$20.

The bill would require the fees to be deposited in the State Treasury to the credit of the Transportation Administration Collection Fund for the administration of the Act, rather than to the General Fund, as currently provided.

Memo of Understanding; Interstate Compact

The bills would require the State to enter into a memorandum of understanding with the U.S. Secretary of Homeland Security to use the automated system known as Systematic Alien Verification for Entitlements (SAVE) routinely, as provided by Section 404 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), to verify the legal presence status of a person other than a U.S. citizen who was applying for an operator's license, chauffeur's license, or official State ID card.

(Section 404 of IIRIRA requires the U.S. Attorney General to establish a pilot program confirmation system to respond to inquiries made by electing persons and other entities concerning an individual's identity and whether the person is authorized to be employed; and to maintain records of the inquiries made, and confirmations provided or not provided.)

Under Senate Bill 962 (S-1), the State also could enter into and participate in the interstate compact known as the "driver license agreement".

Mopeds

The Vehicle Code requires a person, before operating a moped on a highway, to get a special restricted license to operate a moped, unless the person has a valid operator's or chauffeur's license. A special restricted license to operate a moped may be issued to a person 15 years of age or older if the person satisfies the SOS that he or she is competent to operate a moped with safety. The SOS may not require a road test before issuing a special restricted license to operate a moped.

A restricted moped license must expire on the birthday of the person to whom it was issued in the fourth year following the date of issuance, and may not be issued for longer than four years. A person issued a license to operate a moped must pay \$7.50 for an original license and \$6 for a renewal license. This money must be deposited in the State Treasury to the credit of the General Fund. Out of the fees collected, the SOS must refund to each county or municipality acting as an examining officer \$2.50 for each applicant examined for an original license and \$1 for a renewal license.

Senate Bill 962 (S-1) would remove all of those provisions. Under the bill, a person who was at least 15 years old could operate a moped if he or she provided any of the following:

- A valid operator's license.
- A valid chauffeur's license.
- A valid level 1 graduated driver license.
- Valid proof that the person had completed successfully a moped training class approved by the SOS.

MCL 257.40b et al. (S.B. 962)
28.291 et al. (S.B. 963)
777.11b & 777.12d (S.B. 1075)

BACKGROUND

REAL ID Act

The REAL ID Act was enacted on May 15, 2005, to establish new minimum standards for a driver license or personal identification card to be used for an official purpose, including gaining access to Federal buildings and boarding commercial aircraft.

Under the Act, a state must include the following minimum elements on a driver license or ID card: the person's full legal name, date of birth, and gender; the person's driver license or ID card number; a digital photograph of the person; the person's address of principal residence; the person's signature; physical security features to prevent tampering, counterfeiting, or duplication for fraudulent purposes; and a common machine-readable technology with defined minimum data elements.

Before issuing a driver license or ID card to a person, a state must require the person to present certain documentation, including documentary evidence of one of the following:

- The person is a citizen of the U.S.
- The person is an alien lawfully admitted for permanent or temporary residence in the U.S.
- The person has conditional permanent resident status in the U.S.
- The person has an approved application for asylum in the U.S. or has entered into the U.S. in refugee status.
- The person has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the U.S.

- The person has a pending application for asylum in the U.S.
- The person has a pending or approved application for temporary protected status in the U.S.
- The person has approved deferred action status.
- The person has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the U.S. or conditional permanent resident status in the U.S.

If a person presents any of those documents other than the first four listed above, a state may issue to the person only a temporary driver's license or temporary ID card, which must be valid only during the period of the applicant's authorized period of stay, or if there is no definite end to the authorized stay, one year. A temporary license or ID card must state clearly that it is temporary, and may be renewed only upon presentation of valid documentary evidence that the status by which the applicant qualified for the temporary license or ID card has been extended by the Secretary of Homeland Security.

Before issuing a driver license or ID card, a state must verify with the issuing agency, the issuance, validity, and completeness of each document required to be presented. A state may not accept a foreign document other than an official passport for those purposes. A state must confirm with the Social Security Administration a Social Security number presented by a person using the full SSN.

The Act requires a state to enter into a memorandum of understanding with the Secretary of Homeland Security to use the automated system known as Systematic Alien Verification for Entitlements, as required by Section 404 of the IIRIR Act (described above), to verify the legal presence status of a person, other than a U.S. citizen, applying for a driver license or ID card.

A state also must capture digital images of identity source documents that can be retained in electronic storage in a transferable format; retain paper copies of source documents for at least seven years or images of source documents for at least 10 years; subject each person applying for a driver license to mandatory facial image capture; and establish an effective

procedure to confirm or verify a renewing applicant's information.

A state must ensure the physical security of locations where licenses and ID cards are produced and the security of document materials and papers from which licenses and ID cards are produced, and must subject all individuals authorized to manufacture or produce driver licenses and ID card to appropriate security clearance requirements. The Act also requires a state to establish fraudulent document recognition training programs for appropriate employees engaged in the issuance of driver licenses and ID cards.

In addition, a state must maintain a motor vehicle database that contains all data fields printed on driver licenses and ID cards issued by the state, and motor vehicle driver histories, including motor vehicle violations, suspensions, and points on licenses, and provide electronic access to all other states to information contained in the motor vehicle database.

SAVE

"Systematic Alien Verification for Entitlements" (SAVE) is an electronic system for verifying the immigration status of individuals who are not U.S. citizens and who are applying for certain Federal, state, or local benefits, including a driver license or official ID card. The Immigration Reform and Control Act of 1986 required the Department of Homeland Security to establish SAVE as a pilot program to provide information to governmental agencies. According to U.S. Citizenship and Immigration Services (USCIS), SAVE does not determine eligibility for a specific benefit, but rather provides information on an individual's immigration status that the requesting agency may use to determine eligibility.

The current system provides a number of ways for a governmental agency to verify an individual's immigration status, using his or her Alien Registration Number or other information in some circumstances. According to USCIS, an initial electronic verification through the SAVE databases usually can be done in a few seconds. If that verification fails, the request is referred to an Immigration Status Verifier for additional verification, which generally can be completed within three to five workdays.

If an agency files a manual form requesting verification, the response time may be longer, up to 10 work days for a request from a mandated agency.

The current cost of an initial verification is about \$0.20 to \$0.26 per request, and the cost of an additional verification is about \$0.24 to \$0.48, based on the type of request and the protocol used.

Driver License Agreement

The Driver License Agreement (DLA) is a cooperative arrangement established by the American Association of Motor Vehicle Administrators to provide for the sharing of driver license information and driving records among participating jurisdictions and to enable the enforcement of traffic citations issued in any of the jurisdictions. Jurisdictions under the agreement may include states and territories of the U.S., as well as provinces and territories of Canada and states of the Republic of Mexico or the Federal District of Mexico. The DLA replaced an interstate agreement known as the Driver License Compact, which provided for cooperation among states in collecting traffic citations; and the Non-Resident Violators Compact, an international agreement that dealt with traffic violations committed by individuals from other countries.

Only a few states, including Connecticut and Massachusetts, have adopted the DLA to date.

Attorney General Opinions

Opinion No.6883. In 1995, Attorney General Frank Kelley issued Opinion No. 6883, which concluded that the Department of State could not refuse a driver license to an illegal alien, if the person otherwise was qualified for a license.

The Attorney General found that although the Vehicle Code prohibited the Secretary of State from issuing a driver license to a "nonresident", there was no indication that the prohibition was directed at illegal aliens. The Code defines "nonresident" as "every person who is not a resident of this state". "Resident" means "every person who resides in a settled or permanent home or domicile with the intention of remaining in this state. A person who obtains employment in this state is presumed to have the intention of remaining in this state."

The Attorney General also determined that there was no requirement under the Code that an applicant be a lawful resident of the United States. In addition, the Attorney General found that the Federal Immigration and Nationality Act did not preclude an illegal alien from becoming a resident of a state, and there was precedent for considering illegal aliens to be considered state residents in other contexts.

Opinion No. 7210. On December 27, 2007, Attorney General Mike Cox determined that changes to State and Federal law, as well as heightened concern over the threat of terrorism and national security, warranted a re-examination of the question of issuing driver licenses to nonresidents, and reached a conclusion different from the 1995 opinion.

In particular, the Attorney General noted that the earlier opinion had not addressed the question of whether a resident under the Vehicle Code must be a permanent resident. The Attorney General wrote that the use of the phrase "settled or permanent home" in the definition of "resident" indicated that a resident under the Code must be permanent, not temporary or transient. Therefore, the Attorney General concluded that "only a permanent resident is eligible to receive a driver license in Michigan".

The Attorney General pointed out that Congress has authority over immigration matters, and Federal law includes a specific alien status of "lawfully admitted for permanent residence", which means "the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed". In view of the Federal statute, as well as court decisions, the Attorney General concluded, "It would be inconsistent with that body of law to find that a person in this country illegally, who has not secured permanent alien status from the federal government, can be regarded as a permanent resident in Michigan." (In footnote 10, however, the Attorney General also pointed out that, "[T]he state may not deny residency status to aliens lawfully admitted into the United States if the terms of their admission allow them to establish a domicile in the United States.")

Based on those determinations and an evaluation of relevant case law, the Attorney General issued the opinion that "[O]nly 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...".

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The policies for issuing a driver license or official State ID card adopted by the Secretary of State following Attorney General Opinion No. 7210, have prevented many individuals who are legally present in the United States getting a driver license, because they do not meet the standard of "permanent resident". Before the recent changes, Michigan was one of only seven states in the country that did not require an applicant for a driver license or ID card to demonstrate his or her lawful status, according to the National Immigration Law Center. The Attorney General's opinion tightened the requirements for issuance, but in doing so, blocked many temporary residents who are in the U.S. lawfully from obtaining a license. If left in place, the current policy will create a serious hardship for many nonresidents, including doctors practicing medicine in underserved areas, executives in multinational corporations, highly skilled workers who have entered the United States on H1-b visas, the spouses and other family members of those who are in the U.S. on work visas, and migrant agricultural workers.

Over 373,000 people were in Michigan on visas in 2006, according to the Michigan Economic Development Corporation (MEDC). Those individuals contribute to the State's economy, and their presence should be encouraged. State officials have been engaged in efforts to encourage multinational companies to locate in Michigan, and the current restrictions could counteract those efforts or send the signal that Michigan does not welcome people from outside the U.S.

For practical reasons, nonresidents who are lawfully present in the U.S. should be allowed to obtain a driver license or official ID while they are here. In some cases, a worker must have a license in order to

perform his or her job. The importance of a license goes beyond driving privileges, however: A driver license or ID card also is essential for a wide variety of other purposes, including banking transactions, getting a mortgage, gaining employment, and passing through security at an airport.

At the same time, there are potential security concerns with allowing a person who is not in the country legally to obtain or keep a driver license. To balance the practical needs of lawfully present nonresidents with the security risk, the bills would help to ensure that those who were here legally could obtain a license or ID card, while preventing those who are in the country illegally from doing so.

The bills would increase the security of driver licenses and ID cards in several ways. First, they would require an applicant for a license or ID card to provide additional documentation demonstrating his or her identity and lawful status in the U.S. The SOS would have to verify the accuracy of those documents before issuing a license or ID card, helping to reduce fraud or the use of forged documents or false identification numbers. To bills also would require the SOS to provide staff with training to identify fake documents.

In addition, the bills would provide for a limited-term license or ID card to be issued to a person who was authorized to be in the U.S. only for a definite period or whose permanent status was pending. Under those provisions, a person could renew his or her license only by providing evidence that his or her lawful status had been extended by the Department of Homeland Security, which would help to ensure that immigrants did not remain in the State past their authorized period of stay.

In addition, the bills would require driver licenses and ID cards to include new security features, to make them more difficult to falsify or counterfeit. The requirement for security features on the driver license and the other provisions of the bills would meet the requirements under the Federal REAL ID Act, ensuring that the State's driver licenses and ID cards were acceptable for Federal purposes once the requirements went into effect. Failure to adopt the requirements of the REAL ID Act will mean that Michigan residents will be unable to board a commercial airplane or enter a Federal

building using a Michigan driver license, among other things. Although the deadline for compliance with the Act has been extended, the SOS will need time to implement the considerable changes, and it would be advantageous to begin to comply as quickly as possible. The SOS contract for producing licenses and ID cards will expire soon, so this would be an appropriate time to make the changes to the physical license and the processes for producing the licenses and ID cards. While there would be some additional cost to implementing the measures included in the bills, those costs should be covered by previous appropriations for new technology and by the proposed increased maximum fees in the bills. In addition, Federal grant money is available, but to qualify the State must demonstrate that it is working toward compliance.

Opposing Argument

The provisions of the bills are overly broad, combining implementation of the REAL ID Act with the more pressing issue of addressing the consequences of the recent Attorney General opinion. There is widespread agreement that those who are in the country illegally should be prohibited from obtaining a Michigan driver license. On the other hand, the implementation of the REAL ID Act is more controversial. Thus, it would be preferable to separate the two issues.

Many other states have opposed implementation of the REAL ID Act, because of the cost of meeting the requirements, personal privacy concerns over the amount of information collected, or the perception that the Act will lead to a national ID card, replacing a function that historically has been left to the states. There have been a number of efforts to repeal the Act, and it would be unwise to spend scarce resources on meeting the Act's requirements if it will be repealed.

The costs of implementing the Act could be substantial. The National Conference of State Legislatures (NCSL) estimates that REAL ID Act implementation costs could be more than \$11 billion nationwide. Although the bills would permit the SOS to increase license and ID card fees to cover the higher costs of implementing the new requirements, it is unclear whether that increased revenue would be sufficient.

Response: The SOS recently received additional money for technological improvements, and much of the initial cost of implementing the bills would be covered by that appropriation. Any additional cost would be covered by the higher maximum fees permitted under the bills.

Opposing Argument

As written, the bills would continue to prevent many individuals who are in the country legally from obtaining a driver license or ID card. The acceptable documents listed in the bills do not cover all of the possible types of lawful status, which reportedly include as many as 50 classifications, which may change frequently as the law is amended. Given the significant variety of documents involved, the types of nonresident status with the USCIS, and the complexity of Federal law governing noncitizens in the U.S., a preferable approach might be to refer directly to the Federal law, permitting any person who was able to demonstrate lawful status to obtain a driver license or ID card.

Also, according to testimony before the Senate Transportation Committee, a person is considered to have lawful status if the application to extend his or her current status with the USCIS is pending. In that case, he or she could be unable to produce documentation of lawful status, even though he or she was here legally. The backlog for processing such requests sometimes can be quite long, and a person might wait several months before receiving official confirmation of his or her continued lawful status from the Department of Homeland Security. The delay in receiving documentation could be especially problematic, because the bills would require a person with a limited-term license to renew his or her license every year, in some cases. If a person were required to renew his or her license but had not yet received the required documents, he or she could be left without a license for a portion of each year. A grace period of 180 days in the renewal provisions could help to alleviate that problem.

Opposing Argument

The increased documentation required under the bills could prevent many low income people or individuals without income from obtaining a license. In many cases, such people may not have a birth certificate, Social Security card, or other required documents and might not have the money

to obtain copies of those documents. Even the current documentation requirements are a barrier to an individual with no income and no bills in his or her name. A driver license or ID card is required for a person to receive cash assistance from the Department of Human Services, but without money many of those who need assistance the most are unable to obtain that identification. The bills should include a waiver of the fees for people with low income or without income. In addition, the bills should include provisions for those with no income, proof of living arrangements, or copies of bills in their names, to obtain a license or ID card.

Opposing Argument

Preventing undocumented individuals from obtaining driver licenses could increase the hazards on the road, if those people continued to drive without a license. A driver who has not demonstrated knowledge of the rules of the road can pose a threat to other drivers, and may be more likely to flee the scene of an accident, out of fear of being deported. For these reasons, it is preferable to have all drivers licensed by the State, whether they can demonstrate lawful status or not. For the sake of clarity, a license could be marked "not evidence of legal presence". Immigration enforcement should be left up to the Federal government, and not delegated to the Secretary of State, which does not have the necessary expertise in that area.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

There would be an indeterminate cost to the State associated with the provisions in the proposed legislation. There would be significant costs associated with the possible hiring and training of additional staff, and programming costs including the purchase of additional equipment and software to perform verifications and add two-dimensional bar codes to driver licenses and ID cards. Some of these costs would be covered by the increase in fees for issuance of driver licenses and ID cards and license and ID card renewals. The fee for an original driver license or ID card could be increased by up to \$10 from the current fee, and the renewal fee could be increased by up to \$12 from the current fee for driver licenses or up to \$10 for ID cards.

Currently, there are approximately 7.3 million driver license holders and 1.0 million ID card holders in the State. The amount of revenue generated by the proposed increase in renewal fees alone could raise up to approximately \$97.6 million (\$87.6 million from driver licenses and \$10.0 million from ID cards). These additional fees would not all be generated at once but rather on a staggered basis according to renewal dates. These additional fees would not begin to accrue for several years as people born before December 1, 1964, would have until December 1, 2017, to comply with the proposed requirements while those born after December 1, 1964, would have to comply by December 1, 2014. The revenue from the increased fees would have to be deposited in the Transportation Administration and Collection Fund to be used by the Secretary of State to pay the expenses created by the bills. The additional costs associated with the bills would be covered, in part, and would be limited by the amount of appropriations provided by the Legislature to cover these presumed additional expenses.

The bills' felony provisions would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed offense. An offender convicted of the Class E offense under the bills would receive a sentencing guidelines minimum sentence range of 0-3 months to 24-38 months. Local governments would incur the costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an average annual cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$33,000.

The bills otherwise would have no fiscal impact on local government.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.