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BILL ANALYSIS



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Senate Bill 966 (as enacted)
House Bills 5535 and 5536 (as enacted)
Sponsor: Senator Cameron S. Brown (S.B. 966)
Representative Steve Tobocman (H.B. 5535)
Representative Ed Clemente (H.B. 5536)
Senate Committee: Transportation
House Committee: Transportation

PUBLIC ACT 32 of 2008
PUBLIC ACTS 23 & 24 of 2008

Date Completed: 4-20-09

CONTENT

House Bill 5535 created the "Enhanced Driver License and Enhanced Official State Personal Identification Card Act" to do the following:

- Allow the Secretary of State (SOS) to issue an enhanced driver license and enhanced official State ID card, which may be used in the same manner as a standard license or standard official State ID card, and also as identification for entering the U.S.
- Permit an enhanced driver license or ID card to include radio frequency identification (RFID) technology, which must include reasonable security measures to protect against unauthorized disclosure of personal information.
- Allow a person to choose to apply for a standard or an enhanced license or ID card.
- Require an applicant for an enhanced driver license or ID card to provide certain documentation, including proof of U.S. citizenship.
- Require the SOS to verify the genuineness, regularity, and legality of every application and other documentation submitted for an enhanced license or ID card.
- Prohibit the SOS from issuing an enhanced license or ID card if not satisfied of the genuineness, regularity, or legality of the application, or the truth of any

statement in it, or for any other reason authorized by law.

- Provide that a person who makes a false certification or statement in applying for an enhanced driver license or official State ID card is guilty of a felony.
- Establish a maximum application fee of \$50 for an original or renewal enhanced license or ID card.
- Create the "Enhanced Driver License and Enhanced Official State Personal Identification Card Fund", and require money from fees collected under the bill to be deposited into the Fund, after distribution of a portion to local governments that act as examining officers or examining bureaus and to certain designated funds.
- Permit the SOS, with the approval of the State Administrative Board, to enter into a memorandum of understanding with any Federal agency to obtain approval for an enhanced license or ID card as proof of identity when entering the U.S.
- Permit the SOS, in conjunction with a Federal agency and with the approval of the State Administrative Board, to enter into an agreement with certain foreign governments for the purpose of implementing a border-crossing initiative.

House Bill 5536 amended the Code of Criminal Procedure to include within the

sentencing guidelines a false statement or certification in an application for an enhanced driver license or official State ID card as a Class E felony against public safety, punishable by up to five years' imprisonment.

Senate Bill 966 amended Public Act 222 of 1972 (which provides for an official State personal ID card) to require the Department of State to examine every application for an official State ID card and reject an application if not convinced of its genuineness, regularity, or legality, or the truth of any statement in it, or for any other reason authorized by law.

The bills took effect on March 13, 2008. House Bill 5535 and Senate Bill 966 are described in detail below.

House Bill 5535

Enhanced License & ID Card

The SOS may issue an enhanced driver license or official State ID card to an applicant who provides satisfactory proof of his or her full legal name, U.S. citizenship, identity, date of birth, Social Security number (SSN), residence address, and a photographic identity document. An applicant may choose to apply for a standard driver license or ID card or an enhanced driver license or ID card.

"Enhanced driver license" or "enhanced official state personal identification card" means an operator's or chauffeur's license or an official State ID card issued to an individual under the new Act for the following purposes:

- Use in entering the U.S. at land and sea ports.
- Use in the same manner as a standard driver license or official State ID card.

An enhanced driver license or official State ID card must include reasonable security measures to protect against unauthorized disclosure of personal information regarding residents of the State that will be contained in the enhanced license or ID card. ("Resident" means every person who resides in the State and establishes that he or she is present legally in the U.S.)

An enhanced driver license or official State ID card may include RFID technology that is limited to a randomly assigned number, which must be encrypted if agreed to by the U.S. Department of Homeland Security. The information may not include biometric data. The SOS must ensure that the RFID technology is secure from unauthorized data access and includes reasonable security measures to protect against unauthorized disclosure of personal information. An applicant is required to sign a declaration acknowledging his or her understanding of the RFID technology before he or she is issued an enhanced driver license or official State ID card.

The requirements of the Act are in addition to the requirements otherwise imposed on individuals who apply for a standard driver license or official State ID card.

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

Memorandum of Understanding

The Act permits the SOS, with the approval of the State Administrative Board, to enter into a memorandum of understanding with any Federal agency for the purpose of obtaining approval of an enhanced driver license or official State personal ID card as proof of identity and citizenship for people entering the U.S. at land and sea ports. In conjunction with a Federal agency and with the approval of the State Administrative Board, the SOS may enter into an agreement with the United Mexican States, Canada, or a Canadian province for the purpose of implementing a border-crossing initiative.

Application; Fee

An applicant who chooses to apply for an enhanced driver license or official State ID card must provide all of the following to the SOS in the manner he or she prescribes:

- A completed application indicating the applicant's full legal name; any legal name change resulting from the applicant's adoption, marriage, or divorce, or a court order; date of birth; residence address; height; gender; eye color; SSN; signature; and, if applicable,

the applicant's intention to become an organ donor.

- Documentation demonstrating the applicant's U.S. citizenship, full legal name, any legal name change, date of birth, residence address, and SSN.
- The applicant's signed certification that the information presented by the applicant is true and accurate to the best of his or her knowledge.
- The fee prescribed under the Act.

("Resident address" means the place that is a person's legal residence as that term is defined in Section 11 of the Michigan Election Law, i.e., the place at which a person habitually sleeps, keeps his or her personal effects, and has a regular place of lodging. If a person has more than one residence, or if a wife has a residence separate from that of the husband, the place at which the person resides most of the time is considered his or her official residence for the purposes of the Election Law.)

An application for an original enhanced driver license or ID card must be accompanied by payment of a fee of not more than \$50. The maximum renewal fee for an enhanced driver license or ID card is \$50. If an enhanced driver license or ID card is expired at the time of renewal, the fee must be the same as the fee for an original enhanced driver license or ID card.

A fee paid under the Act is nonrefundable, except for administrative error.

Use of Personal Information

An applicant for an enhanced driver license or ID card must have his or her facial image and signature captured or reproduced by the SOS at the time of application. A person's facial image or signature may be made available by the State and used as follows:

- By a Federal, State, or local government agency for any law enforcement purposes authorized by law.
- By another state to the extent required by Federal law.
- By the SOS for any purpose specifically authorized by law.
- For any other purpose as determined by the SOS, if the person provides his or her written authorization for the release of his or her own facial image or signature.
- As otherwise required by law.

Except as provided above, the SOS may not disclose a person's facial image, signature, or SSN, or copies or digital images of documents retained under the Act.

An enhanced driver license or ID card may not display a person's SSN on its face.

The SOS may disclose digital images of documents retained under the Act to a Federal, State, or local government agency for any law enforcement purpose. Except as otherwise provided in the Act, copies or digital images of documents retained under the Act are exempt from disclosure under the Freedom of Information Act.

The SOS may not compile or maintain a database under the Act that may be shared with a country other than the United States.

Document Verification & Retention

The SOS must examine and verify the genuineness, regularity, and legality of every application and other documentation submitted to the SOS for an enhanced driver license or ID card, and in all cases may investigate as he or she considers necessary or require additional information. The SOS must reject any application if not satisfied of the genuineness, regularity, and legality of the application or supporting documentation, or the truth of any statement contained in the application or supporting documentation, or for any other reason authorized by law.

A decision by the SOS to reject an application for an enhanced driver license or ID card may be appealed under Section 631 of the Revised Judicature Act. (That section provides for the appeal of an order, decision, or opinion of a State board, commission, or agency if an appeal or other judicial review has not been provided for by law. An appeal must be brought in the circuit court of the county in which the appellant resides or the Circuit Court of Ingham County.)

The SOS must retain copies or digital images of documents provided by the applicant to the SOS under the Act. The facial image of an applicant for an enhanced license or ID card who is not issued an enhanced license or ID card must be retained for at least one year. If fraud is suspected, however, a record containing the applicant's facial image and the reason for denial must be retained for at least 10 years.

Penalty for False Statement

A person who makes a false certification or statement in applying for an enhanced driver license or enhanced ID card is guilty of a felony punishable by imprisonment for up to five years or a fine of up to \$5,000, or both.

Distribution of Revenue

The Act creates the Enhanced Driver License and Enhanced Official State Personal Identification Card Fund within the State Treasury. The State Treasurer may receive money or other assets from any source for deposit into the Fund, and must direct its investment. Money in the Fund at the close of the fiscal year must remain in the Fund and not lapse into the State's General Fund.

The SOS is the administrator of the Fund for auditing purposes. The SOS must spend money from the Fund, upon appropriation, to pay the necessary expenses he or she incurs in the administration and enforcement of the Act.

Money from fees collected under the Act must be deposited into the Fund after distribution as required below.

The SOS must refund to each county or municipality acting as an examining officer or examining bureau \$2.50 for each applicant examined for an original enhanced driver license, if the application is not denied and the money refunded is paid to the county or local treasurer and appropriated to the county, municipality, or officer or bureau receiving the money for the purpose of carrying out the Act.

The State Treasurer must deposit \$4 in the Traffic Law Enforcement and Safety Fund for each person examined for an original enhanced driver license.

Except as provided below, \$4.50 of an original enhanced driver license fee and \$6 of a renewal enhanced driver license fee must be appropriated to the Transportation Economic Development Fund and may not be appropriated for any other purpose in any act making appropriations of State funds.

Notwithstanding that provision, \$2.5 million must be deposited in the State Treasury and credited to the General Fund, except that

not more than \$1.0 million must be credited to the Gasoline Inspection and Testing Fund created under the Motor Fuels Quality Act.

The money remaining after those distributions are made must remain in the Enhanced Driver License and Enhanced Official State Personal Identification Card Fund.

Senate Bill 966

The bill amended Public Act 222 of 1972 to require the Department of State to examine and determine the genuineness, regularity, and legality of every application for an official State ID card. In all cases, the Department may investigate as it considers necessary or require additional information.

The Department must reject any application for an official State ID card if not satisfied of the genuineness, regularity, or legality of the application or the truth of any statement contained in it, or for any other reason when authorized by law.

Public Act 222 permits the SOS to disclose personal information in a record maintained under the Act for specified purposes, including the following:

- Use by a Federal, State, or local governmental agency, including a court or law enforcement agency, in carrying out its functions, or by a private person or entity acting on behalf of a governmental agency in carrying out its functions.
- Use by an employer, or the employer's agent or insurer, to obtain or verify information relating to the holder of a commercial driver license or a chauffeur's license.

The bill also permits copies or images of source documents the SOS retains under the Act and the Enhanced Driver License and Enhanced Official State Personal Identification Card Act to be used and disclosed for those two purposes.

MCL 28.301-28.308 (H.B. 5535)
777.11b (H.B. 5536)
28.298 & 28.291a (S.B. 966)

Legislative Analyst: Curtis Walker

FISCAL IMPACT

House Bills 5535 & 5536

Administrative

State: There will be an indeterminate cost associated with the legislation as it is unknown how many driver license or ID card holders will opt for an enhanced driver license or ID card. There will be some costs associated with the possible hiring and training of additional staff, and programming costs including the purchase of additional equipment and software. Some of these costs will be covered by the fees (up to \$50) for issuance of an enhanced driver license or ID card and license and ID renewals.

There are currently approximately 7.3 million driver license holders and 1.0 million ID card holders in the State. The amount of revenue generated by the fees for enhanced driver license or ID cards could total up to \$415.0 million if everyone opted to change to an enhanced driver license or ID card; however, it is estimated that the actual number of people choosing the enhanced version will be significantly less. Funds generated by these fees will be deposited into the Enhanced Driver License and Enhanced Official State Personal Identification Card Fund created under House Bill 5535.

From the money collected and deposited into the Fund, the State Treasurer is required to deposit into the Traffic Law Enforcement and Safety Fund \$4 per original enhanced driver license issued. Additionally, \$4.50 of each original enhanced driver license fee and \$6 of each renewal fee for an enhanced driver license must be appropriated to the Transportation Economic Development Fund and may not be appropriated for any other purpose in any act making appropriations of State funds. Finally, \$2.5 million must be deposited into the State's General Fund; of this amount, not more than \$1.0 million may be credited to the Gasoline Inspection and Testing Fund. The amounts deposited into these Funds will depend on the number of enhanced driver licenses issued or renewed. The maximum net amount remaining in the Enhanced Driver License and Enhanced Official State Personal Identification Card Fund after the above amounts are paid will be an estimated \$344.5 million based on the estimated

possible total revenue of \$415.0 million stated above (if all current driver license and ID card holders convert to the enhanced versions).

Local: Any county or municipality acting as an examining officer or examining bureau will be reimbursed by the Secretary of State the sum of \$2.50 for each applicant examined for an original enhanced driver license.

Corrections

The bills' criminal penalty will have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders will be convicted of making a false certification or statement in applying for an enhanced driver license or identification card. An offender convicted of the Class E offense under the bills will receive a sentencing guidelines minimum sentence range of 0-3 months to 24-38 months. Local governments will incur the costs of incarceration in local facilities, which vary by county. The State will incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$32,000. Additional penal fine revenue will benefit public libraries.

Senate Bill 966

State: There may be some cost to the Secretary of State associated with the requirement to examine and determine the genuineness, regularity, and legality of every application for an official State ID card, including the possible hiring and training of additional staff to carry out these duties. The estimated cost, however, is indeterminate.

Local: The bill will 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.