



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government** – The bill increases the number of regulations surrounding the application process for all state permits and licenses.

**Maintain public security** – The bill places restrictions on the types of government-issued documents that may be relied upon by state officials in an effort to ensure the citizenship and identification of the presenter.

### B. EFFECT OF PROPOSED CHANGES:

#### Federal REAL ID Act of 2005

On May 11, 2005, President Bush signed into law the “REAL ID Act of 2005,” which was attached to the “Emergency Supplemental Appropriation for Defense, the Global War on Terror, and Tsunami Relief, 2005.”<sup>1</sup> Title II of the Act is entitled “Improved Security for Driver’s Licenses and Personal Identification Cards,” and repeals a December 2004 law that required a “cooperative state-federal process” to create federal driver’s license standards.<sup>2</sup> The new law instead “directly imposes prescriptive driver’s license standards.”<sup>3</sup>

The REAL ID Act contains a provision regarding the verification of documents presented to a license-issuing state agency.<sup>4</sup> States must verify with all issuing agencies the issuance, validity, and completeness of all documents presented. The receiving entity also must verify a social security number, if given, with the Social Security Administration.

Before issuing a driver’s license, a state must require and verify valid documentary evidence that the person (i) is a U.S. citizen, (ii) is an alien lawfully admitted for permanent or temporary residence; (iii) has conditional permanent resident status; (iv) is a refugee or has been granted asylum; (v) has a valid, unexpired nonimmigrant visa or nonimmigrant visa status, (vi) has a pending application for asylum, (vii) has a pending or approved application for temporary protected status, (viii) has approved deferred status, or (ix) has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence or conditional permanent resident status.<sup>5</sup>

Basic driver’s license standards also are contained in the act.<sup>6</sup> All licenses must contain:

- The person’s name;
- The person’s date of birth;
- The person’s gender;
- A license number;
- A digital photograph;
- The person’s legal address;
- Physical security features to prevent fraud or counterfeiting; and
- A common machine-readable technology with defined data elements.

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<sup>1</sup> H.R. 1268, P.L. 109-13.

<sup>2</sup> *NCSL REAL ID Act of 2005 Title Summary*, National Conference of State Legislators, available online here: <http://www.ncsl.org/standcomm/sctran/realidsummary05.htm>.

<sup>3</sup> *Id.*

<sup>4</sup> See generally REAL ID Act, s. 202(c)(3)(A), s. 202(d)(4), and s. 202(d)(5).

<sup>5</sup> REAL ID Act, s. 202(c)(2)(A) and (B).

<sup>6</sup> See generally REAL ID Act, s. 202(c) and (d).

Any state that issues a driver's license that does not conform to the REAL ID Act requirements must ensure that the license states on its face that it does not conform to the federal standards.<sup>7</sup> The license also must use a unique design or color indicator to alert agencies that it does not comply.<sup>8</sup>

### State Licenses and Permits

The Department of Highway Safety and Motor Vehicles issues over 1.1 million original Florida drivers licenses and over 500,000 original Florida identification cards each year.<sup>9</sup> Section 322.08, F.S., specifies the current identification requirements for a Florida driver's license, and section 322.051, F.S., specifies the same for an identification card. These provisions allow identification paperwork which "have no photo identification, but which provide legitimacy to the applicant's presence" in the United States.<sup>10</sup>

The Florida Fish and Wildlife Conservation Commission (FWC) issues approximately 2.5 million licenses and permits annually.<sup>11</sup> These include recreational hunting, fresh- and salt-water fishing, commercial fresh- and salt-water fishing, and captive wildlife licenses and permits. Positive proof of identification is not required for these permits and licenses, with the exception of the Disabled Florida Resident License.<sup>12</sup> Approximately 909 different entities sell FWC licenses and permits.<sup>13</sup>

### Department of Elections

Part II of Chapter 97, F.S., the "Florida Voter Registration Act," governs qualifications to register to vote. Section 97.052, F.S., outlines the registration application, which requires:

- The applicant's full name;
- Date of birth;
- Address of legal residence;
- Mailing address (if different);
- County of legal residence;
- Race or ethnicity that best describes the applicant;
- State or country of birth;
- Sex;
- Party affiliation;
- Whether or not the applicant needs assistance when voting;
- Name and address where last registered;
- Last four digit's of applicant's social security number;
- Florida Driver's license number or identification card number;
- An indication, if applicable, that applicant has no Florida driver's license or identification card;
- Telephone number (optional);
- Signature;
- Whether or not the registration is used for an initial filing, an update, or a replacement;
- A checkbox indicating whether or not the application is a U.S. citizen;
- A checkbox indicating that, if the applicant is a felon, that he or she has had his or her civil rights restored; and
- A statement indicating that, an applicant has never been adjudicated incapacitated with respect to voting, or if so, he or she has had his or her competency to vote restored.

Section 97.053, F.S. states that the application is complete if the items above are properly included on the form. The department must verify the "authenticity or non-existence of" the driver's license number, identification card, or last four digits of the social security number.

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<sup>7</sup> REAL ID Act. s. 202(d)(11).

<sup>8</sup> *Id.*

<sup>9</sup> *2006 Bill Analysis for HB 861*, Department of Highway Safety and Motor Vehicles, March 22, 2006.

<sup>10</sup> *Id.*

<sup>11</sup> *2006 Legislative Bill Analysis – HB 861*, Florida Fish and Wildlife Conservation Commission, March 21, 2006.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

### Proposed Changes

The bill sets forth a list of criteria that all state agencies<sup>14</sup> issuing licenses, permits, or other public benefits must review before relying on any foreign identification. Agencies must not rely on the veracity of any identification document unless the document is:

- A valid, unexpired passport issued by the United States;
- An immigration document issued by the Federal Government;
- Any document issued by an agency of the Federal Government or the Armed Services of the United States which bears a photograph of the person;
- A valid, unexpired passport issued by a foreign government if the passport includes or is accompanied by a document proving that the alien is lawfully in the United States;
- A valid, unexpired identification document issued by another state or political subdivision, if the document:
  - Bears a recent photograph of the person;
  - Is issued by a state or political subdivision which prohibits the issuance of identification cards to illegal immigrants; and
  - The state or political subdivision requires independent verification of the records offered by the person to prove identity when applying for the identification document.

Although the proposed legislation does not reach so far as to dictate Florida Driver's License standards, the requirements contained in the bill ultimately work to enforce portions of the REAL ID Act of 2005 at the state level by requiring state agencies to rely only on identification from other states that meets certain requirements of the REAL ID Act.

The bill specifically identifies the Division of Elections as an entity which must follow the enumerated standards, notwithstanding the provisions of Part II of Chapter 97, F.S.

#### C. SECTION DIRECTORY:

Section 1 creates an unnumbered statute relating to verification of identity for public benefits, licenses, permits, and voter registration.

Section 2 provides an effective date of July 1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The FWC has identified a potential decrease in revenues due to the likelihood that permit and license seekers will not be able to comply with the additional scrutiny, and will not pay for permits and licenses at historical levels. As a result, recurring state revenue may decrease. Non-recurring state revenue may be lost, if FWC internet and phone-based sales are halted, and if private agents decline to continue their involvement in license and permit selling.

##### 2. Expenditures:

The FWC identifies an unspecified but substantial expenditure related to systems changes required to meet the higher standards promulgated by the bill.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

The bill does not create, modify, amend, or eliminate a local revenue source.

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<sup>14</sup> The bill applies to any "department, agency, commission, or other entity of the state, a political subdivision, or an officer or employee thereof."

2. Expenditures:

The FWC suggests that tax collectors acting as license agents may face increased costs relating to the verification of acceptable documents.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The heightened requirements will presumably result in a significant expense, which may be passed on to persons seeking a permit or license from the state. FWC expresses a concern that the raised barrier to a license or permit may lead to an increase in illegal unlicensed hunting or fishing and a reduction in the amount of dues collected under FWC programs.<sup>15</sup>

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The DHSMV has stated that the higher standards imposed by this law will negatively impact millions of Florida citizens, new residents, and visitors by blocking access to licenses or permits. The DHSMV also points out that the increased requirements will make a driver's license or identification card necessary for many transactions with Florida's government, increasing the amount of bureaucracy in citizen's lives. Finally, the DHSMV notes potential unintended consequences regarding "titling and registration of motor vehicles, vessels, etc."<sup>16</sup>

The FWC has identified a major concern regarding the ability or inability of its numerous vendors to properly screen identification documents and determine which are acceptable.<sup>17</sup> The FWC also states that its automated license system cannot be updated within the implementation timeframe given in the bill.<sup>18</sup>

The bill requires photographic identification to include a "recent" photograph, but no direction is given regarding the definition of "recent."

The Department of State has opined that the application of the increased identification standards may represent violations of current federal election laws.<sup>19</sup>

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<sup>15</sup> *Id.*

<sup>16</sup> *2006 Bill Analysis for HB 861*, Department of Highway Safety and Motor Vehicles, March 20, 2006.

<sup>17</sup> *2006 Legislative Bill Analysis – HB 861*, Florida Fish and Wildlife Conservation Commission, March 21, 2006.

<sup>18</sup> *Id.*

<sup>19</sup> Email from Department of State, February 21, 2006.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

Not applicable.