

MINUTES OF THE SENATE TRANSPORTATION COMMITTEE

The meeting was called to order by Chairman Dwayne Umbarger at 8:30 a.m. on January 25, 2011, in Room 152-S of the Capitol.

All members were present except:

Senator Vicki Schmidt-excused
Senator Bob Marshall-excused
Senator Anthony Hensley-excused

Committee staff present:

Scott Wells, Office of the Revisor of Statutes
Daniel Yoza, Office of the Revisor of Statutes
Chris Courtwright, Kansas Legislative Research Department
Jill Shelley, Kansas Legislative Research Department
Toni Beck, Committee Assistant

Others attending:

See attached list.

Introduction of Bill:

Senator Kelly Kultala, moved 11RS0494, Highways 24 and 7 intersection, be named after former Representative Margaret Long. Senator Huntington seconded the motion. The motion carried.

Don Moler, Executive Director, League of Kansas Municipalities, presented Home Rule and Traffic Law to the committee. He distributed copies of the 2010 Standard Traffic Ordinance to the committee. Municipal ordinance need not conform with state law. New DUI laws under consideration would require rewrite of the current manual. Senator Reitz commented all local municipalities would abide by state law if this passes. Senator Donovan commented on huge costs for DUI incarcerations. The burden would be in reference to additional expenses incurred by the state per Don Moler.

Jill Shelley, KLRD, made a presentation on Driver's License Photograph Identification Exemptions. (Attachment 1) Amish opposition for religious reasons are documented and sustained by Arkansas, Indiana, Minnesota, Missouri, Nebraska, Oregon and Wisconsin. Federal law accepts state identification with real photo identification on file in the state of origin. Senator Petersen questioned if the Amish approved of photographs on file. Ms. Shelley said it was her understanding various Amish groups allow their members to have photographs on file with state agencies. Additional questions and answers were accepted by Carmen Alldritt, Director of Vehicles, Department of Revenue at the chairman's request.

The next meeting is scheduled for January 27, 2011. The meeting was adjourned at 9:20 a.m.

SENATE TRANSPORTATION COMMITTEE

GUEST LIST

DATE: January 25

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January 24, 2011

To: Senate Committee on Transportation

From: Jill Shelley, Principal Analyst

Re: Survey of States with Driver's License Photograph Exemptions

Information was requested on other states' laws regarding state-issued identification for those who object to having their photographs taken. Official information from seven states that allow a driver's license to be issued without a photograph is quoted below. Additionally, summary information on the REAL ID Act and from the Congressional Research Service report *Legal Analysis of Religious Exemptions for Photo Identification Requirements* is included at the end of this memorandum.

The request was prompted by inquiries on behalf of Amish Kansans. A scholar of Amish belief quoted in the *Amish News*¹ states that Amish believers object to carrying a government-issued identification card with a photograph on it because, in Amish culture, humility is valued and "photographs are an evidence of pride, in which people are tempted to look at a likeness of themselves with self admiration." The article notes that "some groups allow snapshots for government files, since these photos are not kept by the Amish themselves."

State Information

Arkansas

Arkansas code 27-16-801 (b)(2)

"A license may be valid without a photograph of the licensee when the commissioner is advised that the requirement of the photograph is either objectionable on the grounds of religious belief or the licensee is unavailable to have the photograph made."

Indiana

Indiana code 9-24-11-5

"(c) The bureau may provide for the omission of a photograph or computerized image from any other license or permit if there is good cause for the omission. However, a license issued without a digital photograph must include the language described in subsection (t)."

"(f) Any license or permit issued by the state that does not require a digital photograph must include a statement that indicates the license or permit may

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not be accepted by any federal agency for federal identification or any other federal purpose."

Indiana Bureau of Motor Vehicles driver's manual

"If you have a religious objection to your photograph being taken you may request a photo-exempt driver's license by completing *Request For Photo Exempt License Or Identification Card - State Form 45811*"

According to the website of the Indiana Bureau of Motor Vehicles (BMV), Indiana is phasing in what it calls SecureID. "SecureID is the Indiana BMV's effort to fully comply with the recommendations of the 9/11 Commission and state and federal regulations." As a driver's license or identification card is issued or must be renewed, the applicant must present original versions or certified copies of the following documents: one document proving identity, one document providing the applicant's Social Security number, one document proving lawful status in the United States, and two documents proving Indiana residency. A person having a current Indiana driver's license or identification card who is having "trouble collecting your documents" can apply for a non-SecureID driver's license or identification card in order to drive or vote.

Minnesota

Statute 171.071

"Notwithstanding the provisions of section 171.07, the commissioner of public safety may adopt rules to permit identification on a drivers license or Minnesota identification card in lieu of a photograph or electronically produced image where the commissioner finds that the licensee has religious objections to the use of a photograph or electronically produced image."

However, in 2010, Minnesota passed what became its Session Law Ch. 316. It introduces the idea of an "enhanced driver's license," which is defined this way: "a license, instruction permit, or provisional license, to operate a motor vehicle issued or issuable under the laws of this state by the commissioner of public safety that *denotes citizenship and identity and contains technology and security features approved by the secretary of the United States Department of Homeland Security*. [emphasis added] An enhanced driver's license may be used in the same manner as a driver's license, instruction permit, or provisional license, and is approved by the secretary of the United States Department of Homeland Security for purposes of entering the United States. . . ." Starting July 1, 2012, the exception to an image on a driver's license or Minnesota identification card will not apply to the enhanced driver's license.

Missouri

Missouri Revised Statutes §302.181

"8. If otherwise eligible, an applicant may receive a drivers license or nondrivers license without a photograph or digital image of the applicant's full facial features except that such applicant's photograph or digital image shall be taken and maintained by the director and not printed on such license. In order to qualify for a license without a photograph or digital image pursuant to this section the applicant must:

- (1) Present a form provided by the department of revenue requesting the applicant's photograph be omitted from the license or nondriver's license due to religious

affiliations. The form shall be signed by the applicant and another member of the religious tenant [sic; tenet] verifying the photograph or digital image exemption on the license or nondriver's license is required as part of their religious affiliation. The required signatures on the prescribed form shall be properly notarized;"

Nebraska

Annotation to statute 60-4,119

"Applicant who otherwise qualifies for a motor vehicle license may not be denied such a license for failure to allow her photograph to be taken when the applicant refuses to have photograph taken because of deeply held religious beliefs. *Quaring v. Peterson*, 728 F.2d 1121 (8th Cir. 1984)." *affirmed by an equally divided court*, 472 U.S. 478 (1985).

Oregon

Administrative rule 735-062-0120

"Standards for Issuance of Driver's Licenses Without a Photograph

- (1) DMV may, upon receipt of a written request, and for good cause, provide for issuance of a valid driver license without a photograph to any person qualified to hold an Oregon driver license:
 - (a) Who is a member of a religious denomination that prohibits photographing of its members because it is contrary to its religious tenets;
 - (b) Whose religious beliefs require the person to wear a head covering, clothing or similar material that partially or completely covers the person's face, preventing the person from being photographed as described in OAR 735-062-0016(3); or
 - (c) Who has severe facial disfigurement.
- (2) In addition to satisfying the requirements of section (1), an applicant for issuance of a driver license under this rule must:
 - (a) Provide proof of verifiable SSN, or proof of ineligibility for a SSN, as provided in OAR 735-062-0005(2);
 - (b) Provide proof of legal presence as provided in OAR 735-062-0015;
 - (c) Provide proof of identity and date of birth as provided in OAR 735-062-0020; and
 - (d) Provide proof of residence address as provided in OAR 735-062-0030(1)."

Wisconsin

Wisconsin Administrative Code Trans 102.03

- "(2) A license may be issued without a photograph or with a prior photograph on file with the department to any of the following: . . .
- (b) A Wisconsin resident who has seriously held religious convictions that do not allow the resident to be photographed. To qualify for this exemption, the person shall complete, sign and date a statement on a form provided by the

department, certifying that the person objects to being photographed due to a seriously held religious conviction."

Federal Law Regarding Photograph Requirements

To implement recommendations of the 9/11 Commission, in 2005 Congress passed the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief (REAL ID Act).² The purpose of the REAL ID Act is to improve security for driver's licenses and personal identification cards, establishing minimum requirements for applications and for the documents themselves to be accepted as identification for certain federal purposes. Federal Department of Homeland Security (DHS) regulations (6 CFR 37.5) state that "federal agencies shall not accept" a driver's license or identification card that does not meet REAL ID requirements after December 1, 2014, from anyone born after December 1, 1964, and after December 1, 2017, from anyone. Each state must demonstrate material compliance with the core requirements of the REAL ID Act by May 11, 2011.

According to the REAL ID Act, "a Federal agency may not accept, for any official purpose, a driver's license or identification card issued by a State to any person unless the State is meeting the requirements of" the REAL ID Act. An "official purpose," as defined by the REAL ID Act, includes accessing a federal facility, boarding federally regulated commercial aircraft, and entering nuclear power plants.

The REAL ID Act requires, without exemption, that a digital photograph appear on all state driver's licenses and photo ID cards for them to be accepted by the federal government for "official purposes." The preamble to the final rule regarding compliant documents³ says this:

Section 202(b) of the Act directs that REAL ID-compliant licenses and identification cards must include the following information:

- (1) The person's full legal name, date of birth, and gender;
- (2) The person's driver's license or identification card number;
- (3) A digital photograph of the person;
- (4) The person's address of principal residence;
- (5) The person's signature;
- (6) Physical security features designed to prevent tampering, counterfeiting, or duplication of the driver's licenses and identification cards for fraudulent purposes; and
- (7) A common machine-readable technology, with defined minimum elements.

DHS believes that a driver's license or identification card issued without a photograph could not be issued as a REAL ID-compliant driver's license or identification card. Many States now issue non-photo driver's licenses or identification cards based on the applicant's religious beliefs. States may continue to issue these driver's licenses or identification cards to such individuals and DHS recommends that these driver's licenses and identification cards be issued in accordance with the rules for non-compliant driver's licenses and identification cards at Sec. 37.71.

The rules at 6 CFR 37.71 [copy attached] allow a state that has identification cards (including driver's licenses) that comply with REAL ID requirements to issue a non-compliant identification document as long as the document is clearly and easily distinguishable from a compliant document.

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Efforts to repeal REAL ID Act requirements have not been successful. The PASS ID Act, introduced in 2009, would have replaced the REAL ID Act if enacted. It also would have required a digital facial image on any drivers license or identification card used by a federal agency for official purposes (such as those listed above) and "mandatory facial image capture" for each person who submits an application for a driver's license or identification card. Two bills filed and assigned to committees in the U.S. House of Representatives in January 2011 also address identification card requirements. H.R. 102 would specify identification required to open a bank account, including REAL-ID-compliant identification; H.R. 220 would not allow a federal agency to implement identification standards for any agency other than itself.

Legal challenges to date have not removed the photograph requirement. Legal challenges to the REAL ID Act's photograph requirement are based mostly on the Religious Freedom Restoration Act of 1993 (RFRA). Challengers argue that the RFRA mandates an exemption from the photograph requirement in order to comport with its Free Exercise Clause requirements. However, a Supreme Court case from 1990 (*Employment Division, Department of Human Resources of the State of Oregon, et al. v. Alfred Smith*) asserted that the Free Exercise Clause does not "relieve an individual of the obligation to comply with a valid and neutral law of general applicability."⁴ Cynthia Brougher of the Congressional Research Service in her *Legal Analysis of Religious Exemptions for Photo Identification Requirements* stated that "particularly after 9/11, courts appear more likely to apply the photo requirement strictly, without exemption, if the government's compelling interest is directly related to security concerns."⁵

Attachment:

Excerpts from Department of Homeland Security regulations 6 CFR 37.17 and the text of 6 CFR 37.71, implementing the REAL ID Act of 2005

¹ <http://www.amishnews.com/amisharticles/amishand%20photos.htm> accessed 10 January 2011

² Pub. L. No. 109-13, §§ 201-07, 119 Stat. 231, 311-316 (codified as amended in scattered sections of the U.S. Code)

³ Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes; Final Rule; 73 FR 5271-5340; 29 January 2008

⁴ *Employment Div., Ore. Dept. of Human Res. V. Smith*, 494 U.S. 872 (1990), quoting *U.S. v. Lee*, 455 U.S. 252, 263 n. 3 (1982)

⁵ Brougher, Cynthia. *Legal Analysis of Religious Exemptions for Photo Identification Requirements*. R45015. Congressional Research Service. 13 April 2009.

Attachment:

Excerpts from federal rules implementing the REAL ID Act of 2005

6 CFR Sec. 37.17 Requirements for the surface of the driver's license or identification card.

To be accepted by a Federal agency for official purposes, REAL ID driver's licenses and identification cards must include on the front of the card (unless otherwise specified below) the following information:

- (a) Full legal name. Except as permitted in Sec. 37.11(c)(2), the name on the face of the license or card must be the same as the name on the source document presented by the applicant to establish identity. Where the individual has only one name, that name should be entered in the last name or family name field, and the first and middle name fields should be left blank. Place holders such as NFN, NMN, and NA should not be used.
 - (b) Date of birth.
 - (c) Gender, as determined by the State.
 - (d) Unique Driver's license or identification card number. This cannot be the individual's SSN, and must be unique across driver's license or identification cards within the State.
 - (e) Full facial digital photograph. A full facial photograph must be taken pursuant to the standards set forth below:
- (1) States shall follow specifically ISO/IEC 19794-5:2005(E) Information technology—Biometric Data Interchange Formats—Part 5: Face Image Data ...

These standards include:

- (i) Lighting shall be equally distributed on the face.
 - (ii) The face from crown to the base of the chin, and from ear-to-ear, shall be clearly visible and free of shadows.
 - (iii) Veils, scarves or headdresses must not obscure any facial features and not generate shadow. The person may not wear eyewear that obstructs the iris or pupil of the eyes and must not take any action to obstruct a photograph of their facial features ...
- (f) Address of principal residence, except an alternative address may be displayed for: [includes victims of domestic violence, others] . . .
 - (g) Signature. . . . [includes exceptions for those unable to sign]
 - (h) Physical security features, pursuant to Sec. 37.15 of this subpart.
 - (i) Machine-readable technology on the back of the card, pursuant to Sec. 37.19 of this subpart.
 - (j) Date of transaction.

- (k) Expiration date.
- (l) State or territory of issuance.
- (m) Printed information. The name, date of birth, gender, card number, issue date, expiration date, and address on the face of the card must be in Latin alpha-numeric characters . . .
- (n) The card shall bear a DHS-approved security marking on each driver's license or identification card that is issued reflecting the card's level of compliance as set forth in Sec. 37.51 of this Rule.

6 CFR Sec. 37.71 Driver's licenses and identification cards issued under section 202(d) (11) of the REAL ID Act.

- (a) Except as authorized in Sec. 37.27, States that DHS determines are compliant with the REAL ID Act that choose to also issue driver's licenses and identification cards that are not acceptable by Federal agencies for official purposes must ensure that such driver's licenses and identification cards--
 - (1) Clearly state on their face and in the machine readable zone that the card is not acceptable for official purposes; and
 - (2) Have a unique design or color indicator that clearly distinguishes them from driver's licenses and identification cards that meet the standards of this part.
- (b) DHS reserves the right to approve such designations, as necessary, during certification of compliance.