Approved	03/11/11
- 11	Date

#### MINUTES OF THE ETHICS AND ELECTIONS COMMITTEE

The meeting was called to order by Chairman Terrie Huntington at 9:36 a.m. on March 3, 2011, in Room 159-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Office of the Revisor of Statutes Jill Shelley, Principal Analyst, Kansas Legislative Research Department Martha Dorsey, Principal Analyst, Kansas Legislative Research Department Ellen Martinez, Committee Assistant

Conferees appearing before the Committee:

Others attending:

See attached list.

The Chairman called the meeting to order and introduced her intern, Jenna Olitsky, a sophomore at the University of Kansas.

Martha Dorsey, Kansas Legislative Research Department, gave a presentation the background and current laws in the United States for voter identification and registration requirements. The Federal Help American Vote Act (HAVA) has certain requirements regarding voter identification. In Kansas, current law requires persons voting for the first time to provide identification unless they have done so when they registered to vote. Twenty seven states have enacted broader voter ID requirements than those required by HAVA. Comparisons were made to laws enacted in Indiana and Georgia to the proposed Kansas law. (Attachment 1)

Senator Apple requested that staff provide a side by side comparison of the proposed Kansas legislation to the Indiana law. Senator Reitz requested evidence of voter fraud in Kansas.

Jill Shelley, Principal Analyst, Kansas Legislative Research Department, provided written testimony. (Attachment 2)

The Chairman asked if Carmen Alldritt, Director, Division of Motor Vehicles, would testify at the committee's next meeting to discuss the impact that the Voter Identification Law would have on the Kansas Department of Motor Vehicles.

The next meeting is scheduled for March 9, 2011.

The Chairman thanked the staff for appearing before the Committee.

The meeting was adjourned at 10:25 a.m.

## SENATE ETHICS AND ELECTIONS COMMITTEE GUEST LIST

Date: \_\_\_\_\_\_ March 3, 2011

NAME	REPRESENTING
Faul Johnson	Ks Pural Center
Angelaklleeks	
Ryan Kriegshauge	505
Kathleon Ontlan	Voter
Brad Bryant	Sec of state
Mindy Brissey	AFT-Kanses
Ethilyn Lambott	Voter

### KANSAS LEGISLATIVE RESEARCH DEPARTMENT

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March 3, 2011

### IDENTIFICATION AND CITIZENSHIP REQUIREMENTS FOR VOTER REGISTRATION AND VOTING

#### Part One - Voter Identification Requirements

#### National Voter Identification (ID) Requirements

The federal Help America Vote Act (HAVA) requires all states obtain identification from first-time voters who registered to vote by mail and did not provide identification with their mail-in voter registration. Public Law 107-252, Section 303 further specifies how a voter may meet these requirements:

- For those voting in person, presenting to the appropriate official a current and valid photo ID, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the voter's name and address.
- For those voting by mail, submitting with the ballot a copy of a current and valid photo ID, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the voter's name and address.

#### **Current Kansas Law**

Current law requires persons voting for the first time in the county to provide identification unless they have done so when they registered. Acceptable identification forms include a current, valid Kansas driver's license, a nondriver's ID card, a utility bill, bank statement, paycheck, government check or other government document containing the voter's current name and address as indicated on the registration book. A voter's driver's license copy or number, nondriver's ID card copy or number, or the last four digits of the voter's Social Security number may be provided when applying for an advance ballot to be transmitted by mail.

#### **Other State Laws**

According to research conducted by the National Conference of State Legislatures (NCSL), 27 states have enacted broader voter ID requirements than those required by HAVA. In these states, all voters are asked to show ID prior to voting. Nine states request or require a photo ID, and the other eighteen states accept additional forms of ID that do not necessarily include a photo. All 27 states have some recourse for voters without ID to cast a vote.

Ethics	and El	ections	s Cor	nmitte	e
Attach	ment_	1			
Date	3-	3-	11		

In Attachment 1, developed by NCSL, Table 1 briefly summarizes the NCSL summary of the 27 states' ID requirements. It should be noted that comparison among states' voter ID requirements is somewhat complex. For example, Arizona's voter ID law does not require voters to present a photo ID; however, it only requires one form of ID if a valid photo ID form is presented. Otherwise, voters must show two different forms of ID. Table 2 in that document provides another, more detailed summary of the voter ID laws in the 27 states identified in the previous table.

The number of states with broader-than-HAVA voter ID requirements has grown over the past several years. In January 2007 the NCSL reported 24 such states. At that time, seven were listed as either requesting or requiring photo ID. In the November 2010 NCSL report that number had grown to nine. (The law for one of the newly added states, Oklahoma, will take effect July 1, 2011.)

#### Case in Point: Indiana's Photo Voter ID Law

Indiana Public Law 109-2005 requires the state's voters to present a government-issued photo ID before casting a ballot at the polls on the day of the election. The photo ID must meet the following four criteria:

- It must display a photo of the voter;
- It must display the voter's name, and the name must conform to the voter registration record. According to the Indiana Office of the Secretary of State, conformity does not require the names on the two records be identical;
- It must display an expiration date and either be current or have expired sometime after the date of the most recent general election; and
- It must be issued by the State of Indiana or the U.S. government. According to the Indiana Office of the Secretary of State, in most cases an Indiana driver's license, Indiana photo ID card, military ID or U.S. passport is sufficient. A student ID from an Indiana State school may be used only if it meets all four criteria specified. A student ID from a private institution may not be used for voting purposes.

A voter who is unable or unwilling to present ID meeting these requirements may cast a provisional ballot. The voter then has until noon 10 days after the election to follow up with the county election board and either provide the necessary documentation or affirm one of the law's exemptions applies.

Exceptions are made for some individuals, who first must cast a provisional ballot and afterward sign an affidavit attesting that:

- The voter is indigent and unable to obtain proof of identification without the payment of a fee; or
- The voter has a religious objection to being photographed.

The law also stated the intent of the Indiana General Assembly was that no fee or charge be imposed for the issuance of a state ID card (whether original, renewal or duplicate) to any individual who will be at least 18 years of age at the next general, municipal or special election. The law then directed the Bureau of Motor Vehicles to amend its rules to remove all such fees and charges before January 1, 2006.

Indiana's photo ID law was upheld by the 7th U.S. Circuit Court of Appeals in January 2007. The U.S. Supreme Court upheld the ruling on appeal in April 2008.

#### Case in Point: Georgia's Photo Voter ID Law

Georgia Code 21-2-417 requires each voter who votes at the polls provide one of the following photo ID forms:

- A Georgia driver's license;
- A valid Georgia voter ID card or other valid ID card issued by any branch, department, agency, or entity of any U.S. state or the United States, which is authorized by law to issue personal ID, if the ID form contains a photo;
- A valid U.S. passport;
- A valid employee ID card containing a photo and issued by the government of any Georgia government entity or the U.S. government; or
- A valid tribal ID card containing a photo.

A voter who is unable to produce any of the authorized ID forms may vote a provisional ballot if the voter affirms he/she is the person identified in his/her voter certificate. The provisional ballot is counted only if the registrars are able to verify current and valid ID within three days following the close of the polls and that the person casting the provisional ballot timely registered to vote and was eligible and entitled to vote in such primary or election.

Georgia law requires each county board of registrars to provide at least one place in the county at which it must issue Georgia voter ID cards. The law prohibits the charging of any fee for the voter ID card.

The 11<sup>th</sup> Circuit Court of Appeals upheld a lower court's refusal to grant a permanent injunction against Georgia's voter ID law in January 2009.

#### Recent Kansas Legislation

A number of bills requiring Kansas voters to show a photo ID at the polls have been proposed in the past several years. Of those, four have been worked significantly by the Legislature; of the four, one (2008 HB 2019) passed both legislative chambers and was vetoed by the Governor. The following table provides a comparison of the four bills, two of which were from the 2007-2008 biennium and two from the 2009-2010 biennium.

#### Comparison of Selected Bills Requiring Photo Voter ID

PROVISION	2007 - 2008		2009 -	2010
	H. SUB. S.B. 169	H.B. 2019 - <u>VETOED</u>	H.B. 2077	H. SUB. S.B. 3
ID Required of All In- Person Voters	Yes	Yes	Yes	Yes
Photo ID Required of All In-Person Voters	Yes	Yes	Yes	Yes
Acceptable Photo ID Forms	See Note 1	Same as S.B. 169	Same as S.B. 169 (KS DL/ID card does not specify "current")	Same as S.B. 169
Certain Voters Exempted from ID	See Note 2	Same as S.B. 169	Same as S.B. 169	Same as S.B. 169
Free Photo ID to Anyone 18+ Who Qualifies (Poverty)	Yes	Yes	Yes	Yes
Affidavit Required for Free Photo ID Attesting to Qualification; Penalty	Yes	Yes	Yes	Yes
ID Forms for Voters- By-Mail Revised	Yes	Yes	Yes	Yes
Delayed Effective Date(s)	Yes	Yes	Yes	Yes

Notes: 1. (a) Current KS driver's license; (b) current KS nondriver ID; (c) U.S. Passport; (d) Employee ID; (e) debit or credit card; (f) military ID; (g) student ID; (h) public assistance ID.

2. (a) Age 65 or older; (b) temporary or permanent physical disability; (c) active duty military; (d) merchant marine; (e) spouse, dependent of (c) or (d) out of country; (f) eligible voters residing outside the U.S.

#### Part Two - Voter Registration Requirements

#### **National Voter Registration Requirements**

The U.S. Voting Rights Act of 1965 allows all U.S. citizens to vote at any election in any state. Title 42, Chapter 20, Subchapter I, Section 1971 states, in part:

"(1) All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding; by or under its authority, to the contrary notwithstanding.

(2) No person acting under color of law shall—

- (A) in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote;
- (B) deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election..."

The National Voter Registration Act of 1993 (NVRA), which expanded the locations at which a person may register to vote, requires that a voter registration application form used in conjunction with a driver's license application include a statement that states each eligibility requirement (including citizenship) for that state. Title 42, Chapter 20, Subchapter I-H, Section 1973gg-3 states, in part:

- "(2) The voter registration application portion of an application for a State motor vehicle driver's license ...
  - (B) may require only the minimum amount of information necessary to -
  - (i) prevent duplicate voter registrations; and
- (ii) enable State election officials to assess the eligibility of the applicant and to administer voter registration and other parts of the election process;
  - (C) shall include a statement that -
  - (i) states each eligibility requirement (including citizenship);
  - (ii) contains an attestation that the applicant meets each such requirement; and
  - (iii) requires the signature of the applicant, under penalty of perjury...."

Finally, HAVA (Public Law 107-252, Section 303) requires voter registration applicants provide one of the following when registering:

- The applicant's driver's license number, if he or she possesses a current and valid driver's license.
- The last four digits of the applicant's social security number, if he or she does not possess a driver's license.
- If an applicant possesses neither a driver's license nor a social security number, the state is required to assign the applicant an identification number for voter registration purposes.

#### **Current Kansas Law**

KSA 25-2309 requires an applicant for voter registration fill out a form specified by law and sign under penalty of perjury. The application form must contain the following elements (or space therefor):

- Name;
- Place of residence and mailing address if residence is not a postal address;

- Date of birth;
- Sex;
- The last four digits of the person's social security number or the person's full driver's license or nondriver's identification card number;
- Telephone Number (if available);
- Naturalization data (if applicable);
- Residence at time of last registration;
- When present residence was established;
- Name under which last registered, if different;
- Attestation that applicant meets eligibility requirements;
- A statement that submission of false application is sentence of 17 months;
- A statement that if applicant declines to register, it will remain confidential;
- A statement that if applicant registers, it will remain confidential;
- Political party affiliation;
- A box to check to indicate whether or not the applicant is a U.S. citizen;
- A box to check to indicate whether or not the applicant will be 18 years of age or older on election day;
- The statement, "If you checked 'no' in response to either of these questions (i.e., the last two items immediately preceding this one), do not complete this form"; and
- A statement that the applicant may be required to provide identification when voting.

#### **Other State Laws**

According to research conducted by the NCSL, two states have passed laws requiring individuals provide proof of citizenship when they register to vote. Neither state's law is in effect currently.

Arizona voters in 2004 approved Proposition 200, an initiative measure that revised voter ID requirements for the state, as well as requiring proof of citizenship when registering to

vote. In October 2010 the U.S. Court of Appeals in San Francisco invalidated the proof-of-citizenship requirement.

Georgia is the only other state to have passed a proof-of-citizenship law. Georgia's law remains on hold pending pre-clearance by the U.S. Department of Justice. In November 2010, the state of Georgia filed suit seeking approval of its 2009 proof-of-citizenship law. The suit is asking for a three-judge panel to declare that the law does not violate Section 5 of the Voting Rights Act, which requires changes in voting procedures in states with a history of discrimination to be "pre-cleared."

According to information provided by the Brennan Center for Justice (opponents to proof-of-citizenship requirements for voter registration), a number of states proposed legislation in the 2009-2010 biennium which would require proof of citizenship when registering to vote. In addition to Georgia, those states include Colorado, Illinois, Massachusetts, Mississippi, Nevada, Oregon, Tennessee, Texas, and Utah.

PROVISION	CURRENT LAW	HB 2067, AS INTRODUCED	HB 2067, AS AMENDED  By House Committee of the Whole
Advance Voting in Person		state/district. 4. U.Schassnort.	4. US passport; 6. Lonsi/state/reder-perapayae badas or
ID first time/every time	First time in county where registered	Every time (at every election)	Every time (at every election)
Photo ID required	No managed on registration or pet book	Yes grave of order to a substitution of the su	Yes (with clarification that those without required ID, or name/address do not match registration book information, may vote a provisional ballot)
Acceptable ID forms	Current/valid KS DL, nondriver ID card, utility bill, bank statement, paycheck, government check, other government document showing current name/address as listed on registration book	Same as for voting at polls (see below)	Same as for voting at polls (see below)
Signature verification required	No	No	No State of the St
Ballot transmittal by another	Upon request of voter; no affidavit regarding undue influence	Designated in writing by voter; affidavit regarding undue influence	Designated in writing by voter; affidavit regarding undue influence
Advance Voting by Mail	No	Yes	Yes (with one treatment energy)
ID first time/every time	First time in county where registered	Every time (at every election)	Every time (at every election)
Photo ID required	No see a opposition of the park	Yes (or number thereof)	Yes (or number thereof) (with clarification that those without required ID, or name/address do not match registration book information, may vote a provisional ballot)
Acceptable ID forms	Current/valid KS DL number, nondriver's ID card number, last 4 digits of SSN, or a copy of current/valid	Full KS DL number, KS nondriver's ID card number, or a copy of one of the forms of ID required for voting at the	Full KS DL number, KS nondriver's ID card number, or a copy of one of the forms of ID required for voting at the polls (see below)

### 6-1

PROVISION	CURRENT LAW	HB 2067, AS INTRODUCED	HB 2067, AS AMENDED  By House Committee of the Whole
	KS DL, nondriver's ID, utility bill, bank statement, paycheck, government check or other government document with current name/address as indicated on registration book	polls (see below)	
Signature verification required	No	Yes	Yes (with one technical change)
Voting at the Polls			
ID first time/every time	First time in county where registered	Every time (at every election)	Every time (at every election)
Photo ID required	No	Yes	Yes (with clarification that those without required ID, or name/address do not match registration book information, may vote a provisional ballot)
Acceptable ID forms	Current/valid KS DL, nondriver's ID card, utility bill, bank statement, paycheck, government check or other government document; must contain voter's current name/address as indicated on registration or poll book	VALID IF CONTAINS NAME AND PHOTO AND HAS NOT EXPIRED (unless 65+, it may then be expired document):  1. Driver's license issued by any U.S. state or district;  2. State ID card issued by any state/district;  3. Concealed carry license from any state/district;  4. U.S. passport;  5. Local/state/federal employee badge or ID document;  6. U.S. military ID;  7. KS public postsecondary student ID; or  8. Local/state/federal public	VALID IF CONTAINS NAME AND PHOTO AND HAS NOT EXPIRED (unless 65+, it may then be expired document):  1. Driver's license issued by any U.S. state or district;  2. State ID card issued by any state/district;  3. Concealed carry license from any state/district (technical change only);  4. U.S. passport;  5. Local/state/federal employee badge or ID document;  6. U.S. military ID;  7. KS public postsecondary student ID from an accredited postsecondary education institution; or  8. Local/state/federal public assistance ID

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PROVISION	CURRENT LAW	HB 2067, AS INTRODUCED	HB 2067, AS AMENDED  By House Committee of the Whole
registration requirements of KSA 26-2309 First Birth Certificate Copy to those 184 for purpose of meeting voter registration	No	assistance ID card. IF ADDRESS IS NOT CURRENT: Must submit additional document to establish current address which must be the same as indicated on the registration or poll book	card. IF ADDRESS IS NOT CURRENT: Must submit additional document to establish current address which must be the same as indicated on the registration or poll book
Signature verification required	No	No	No .
Voter Registration		142 - EDBODAC DESC DI NIC SOI	Lay - Buachya naya numiy act
Affidavit re: U.S. citizenship	Yes	No	No
Proof of U.S citizenship	No	Yes	Yes
U.S. citizenship documents	n/a	<ol> <li>DL or nondriver's ID card issued after 4/20/07 from any U.S. state or district if U.S. citizenship is indicated on the DL or card;</li> <li>Birth certificate that verifies U.S. citizenship to the satisfaction of county election officer or SOS;</li> <li>U.S. passport or pertinent pages thereof identifying applicant and passport number;</li> <li>U.S. naturalization documents or certificate number (whereupon certificate number must be verified);</li> <li>Other methods of proof of U.S. citizenship issued by federal</li> </ol>	<ol> <li>DL or nondriver's ID card issued after 4/20/07 from any U.S. state or district if U.S. citizenship is indicated on the DL or card;</li> <li>Birth certificate that verifies U.S. citizenship to the satisfaction of county election officer or SOS;</li> <li>U.S. passport or pertinent pages thereof identifying applicant and passport number;</li> <li>U.S. naturalization documents or certificate number (whereupon certificate number must be verified);</li> <li>Other methods of proof of U.S. citizenship issued by federal government pursuant to Immigration</li> </ol>
PEOVISION	CURRENT LAW	government pursuant to Immigration and Nationality Act of 1952; 6. Bureau of Indian Affairs card	and Nationality Act of 1952; 6. Bureau of Indian Affairs card number, tribal treaty card number or tribal enrollment number;

PROVISION	CURRENT LAW	number, tribal treaty card number or tribal enrollment number	HB 2067, AS AMENDED  By House Committee of the Whole  7. Consular report of birth abroad of a U.S. citizen;  8. Certificate of citizenship from U.S. Citizenship and Immigration Services;  9. Certification of report of birth from U.S. Department of State;  10. American Indian card, with KIC classification, issued by U.S. Department of Homeland Security;  11. Final adoption decree showing name and U.S. birthplace;  12. Official U.S. military record of service showing place of birth in the U.S.; or  13. Extract from a U.S. hospital record of birth created at time of birth showing place of birth in the U.S.
Grandfather clause re: U.S. citizenship	n/a	Yes - effective date of this act	Yes - effective date of this act
Free Nondriver ID Card to those 18+ for purpose of meeting voter registration requirements of KSA 25-2309	No	Yes - must sign affidavit regarding poverty level requirements of bill (class C misdemeanor for falsely signing)	Yes - must sign affidavit regarding poverty level requirements of bill (class C misdemeanor for falsely signing)
Free Birth Certificate Copy to those 18+ for purpose of meeting voter registration requirements of KSA 25-2309	No	Yes - must sign affidavit regarding poverty level requirements of bill (class C misdemeanor for falsely signing)	Yes - must sign affidavit regarding poverty level requirements of bill (class C misdemeanor for falsely signing
Review Process by Secretary of State and State Election Board for applicant failing to provide 1 of 13	No	No	<u>Yes</u>

inc act of voling niere than once	included arrang the acts that consults	Placed in a new section	Placed in a new section
PROVISION	CURRENT LAW	HB 2067, AS INTRODUCED	HB 2067, AS AMENDED  By House Committee of the Whole
proof documents, if the applicant requests a review	Seventy level 9, nonpersor felony	Seventy level 6, nonperson felony	Severity level 8, nonperson feteriy.
Election Crimes			
Advance Voting Crimes	Not included	Added	Added
Marking or transmitting more than one ballot	Not modified by "knowingly"	"Knowingly"	"Knowingly"
Interfering with or delaying transmission of ballot	Not modified by "knowingly"	"Knowingly"	"Knowingly"
Marking, singing, or transmitting ballot or envelope	Not modified by "knowingly"	"Knowingly"	"Knowingly"
Falsely affirming, declaring, or subscribing to any material fact in an affirmation form for a ballot	"Willfully" in; "Knowingly" absent	"Willfully" deleted"; replaced by "Knowingly"	"Willfully" deleted"; replaced by "Knowingly"
Knowingly signing an application form for another person	Not included	Added	Added
Penalty for violation of any of these crimes	Class C misdemeanor (except for nonexistent crime)	Severity level 9, nonperson felony	Severity level 9, nonperson felony
Election Perjury	Willfully committed acts which	"Minimum of an analysis and admits	The consecution of the consecuti
Definition: Intentionally and knowingly falsely swearing or affirming to	affidavit statements	affidavit statements and statements contained in declarations	affidavit statements and statements contained in declarations
Penalty	Severity level 9, nonperson felony	Severity level 8, nonperson felony	Severity level 8, nonperson felony

PROVISION	CURRENT LAW	HB 2067, AS INTRODUCED	HB 2067, AS AMENDED  By House Committee of the Whole
Voting without Being Qualified			
Language re: state of mind	"Willfully" committing acts which constitute the crime	"Knowingly" committing acts which constitute the crime	"Knowingly" committing acts which constitute the crime
Action of voting or attempting to vote at any election by a non-U.S. citizen or person otherwise not qualified to vote	Not included	Added	Added
Actions re: voting more than once	Included	Deleted (placed in new statute)	Deleted (placed in new statute)
Penalty	Class A misdemeanor	Severity level 8, nonperson felony	Severity level 8, nonperson felony
Election Tampering	garantia managarahah		
Penalty	Severity level 8, nonperson felony	Severity level 7, nonperson felony	Severity level 7, nonperson felony
False Impersonation of a Voter			
Clarification that voter being impersonated could be either real or fictitious	Not included	Added	Added
Penalty	Severity level 9, nonperson felony	Severity level 8, nonperson felony	Severity level 8, nonperson felony
Voting More than Once		The second second	A STATE OF STATE OF THE STATE O
The act of voting more than once	Included among the acts that constitute "voting without being qualified" (see above)	Placed in a new section	Placed in a new section

PROVISION	CURRENT LAW	HB 2067, AS INTRODUCED	HB 2067, AS AMENDED  By House Committee of the Whole
Penalty	Class A misdemeanor (in previous placement)	Severity level 8, nonperson felony	Severity level 8, nonperson felony
Secretary of State authority to prosecute election crimes	No	Yes	Yes

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#### 21-4410.

Revisor's Note:

CAUTION: Section was repealed effective July 1, 2011, see L. 2010, ch. 136, § 307.

### PART III.—CLASSIFICATION OF CRIMES AND SENTENCING

### Article 45.—CLASSIFICATION OF CRIMES AND PENALTIES

#### 21-4501.

Revisor's Note:

CAUTION: Section was repealed effective July 1, 2011, see L. 2010, ch. 136, § 307.

CASE ANNOTATIONS

94. Mentioned in sentencing for crimes committed prior to July 1, 1993. State v. Paul, 285 K. 658, 665, 175 P.3d 840 (2008).

#### 21-4501a.

Revisor's Note:

CAUTION: Section was repealed effective July 1, 2011, see L. 2010, ch. 136,  $\S$  307.

21-4502. Classification of misdemeanors and terms of confinement; possible disposition. [See Revisor's Note] (1) For the purpose of sentencing, the following classes of misdemeanors and the punishment and the terms of confinement authorized for each class are established:

(a) Class A, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one year.

(b) Class B, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed six months.

(c) Class C, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one month.

(d) Unclassified misdemeanors, which shall include all crimes declared to be misdemeanors without specification as to class, the sentence for which shall be in accordance with the sentence specified in the statute that defines the crime; if no penalty is provided in such law, the sentence shall be the same penalty as provided herein for a class C misdemeanor.

(2) Upon conviction of a misdemeanor, a person may be punished by a fine, as provided in K.S.A. 21-4503, and amendments thereto, instead

of or in addition to confinement, as provided in this section.

(3) In addition to or in lieu of any other sentence authorized by law, whenever there is evidence that the act constituting the misdemeanor was substantially related to the possession, use or ingestion of cereal malt beverage or alcoholic liquor by such person, the court may order such person to attend and satisfactorily complete an alcohol or drug education or training program certified by the chief judge of the judicial district or licensed by the secretary of social and rehabilitation services.

(4) Except as provided in subsection (5), in addition to or in lieu of any other sentence authorized by law, whenever a person is convicted of having committed, while under 21 years of age, a misdemeanor under K.S.A. 41-719, 41-727, K.S.A. 2010 Supp. 21-36a01 through 21-36a17 or 8-1599, and amendments thereto, the court shall order such person to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008 and amendments thereto and to pay a fee not to exceed the fee established by that statute for such evaluation. If the court finds that the person is indigent, the fee may be waived.

(5) If the person is 18 or more years of age but less than 21 years of age and is convicted of a violation of K.S.A. 41-727, and amendments thereto, involving cereal malt beverage, the provisions of subsection (4) are permissive and not mandatory.

History: L. 1969, ch. 180, § 21-4502; L. 1977, ch. 117, § 2; L. 1979, ch. 90, § 4; L. 1989, ch. 95, § 4; L. 1996, ch. 211, § 5; L. 1999, ch. 57, § 28; L. 2009, ch. 32, § 31; July 1.

Revisor's Note:

CAUTION: Section was repealed effective July 1, 2011, see L. 2010, ch. 136, § 307.

CASE ANNOTATIONS

13. Conviction hereunder upheld; traffic stop and smell of marijuana provided probable cause for search. State v. Preston, 41 K.A.2d 981, 207 P.3d 1081 (2009).

#### 21-4503.

Revisor's Note:

CAUTION: Section was repealed effective July 1, 2011, see L. 2010, ch. 136, § 307.

#### CASE ANNOTATIONS

6. Cited in case upholding denial of motion for continuance to hire private counsel. State v. Kirkpatrick, 286 K. 329, 345, 184 P.3d 247 (2008).

21-4503

Revisor's Note: CAUTION: Se L. 2010, ch. 136,

21-4504.

Revisor's Note: CAUTION: Sec L. 2010, ch. 136,

113. K.S.A. arti hance article 37 cc 321, 164 P.3d 841 114. Under 198t enhanced by convic sey, 38 K.A.2d 319, 115. Legislature scheme when Kanss v. Ruiz-Reyes, 285 1 116. Legislature cable to any felony of v. Paul, 285 K. 658,

### Article **21-4601.**

Revisor's Note: CAUTION: Section L. 2010, ch. 136, § 30

93. Drug treatmen

outlined in 21-4603d (1) P.3d 847 (2009).

#### 21-4602.

CAUTION: Section 1 L. 2010, ch. 136, § 307.

39. Cited; dissenting the sentencing jury rathe 284 K. 741, 752, 753, 16 40. Cited in opinion tutional right to jury tria

P.3d 164 (2008).
41. Cited in decision h
excluded from cases call
State v. Crawford, 39 K.A

42. Cited; 21-4602(c) ation of 60 days in felony ov. Luttig, 40 K.A.2d 1095,

#### 21-4603.

Revisor's Note: CAUTION: Section was L. 2010, ch. 136, § 307.

Law Review and Bar Jou "Relating Kansas Offen (2008).

#### SENTENCING RANGE - NONDRUG OFFENSES Misdemeanor Nonperson Felony 2+ 3+ Nonperson Felonies 1 Person & Misdemeanors 3+ Nonperson Felonies 1 Nonperson Felonies Person No Record Person Felonies Person Felony Felonies THE -Ni VII \_21-VIII LEGEND Presumptive Imprisonment



Legislatures & Elections » Elections & Campaigns » Voter ID: State Requirements

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#### **Voter Identification Requirements**



Updated Nov. 22, 2010

#### First-Time Voters

The federal Help America Vote Act mandates that all states require identification from first-time voters who registered to vote by mail and did not provide verification of their identification with their mail-in voter registration.

#### Blanket Voter ID

Twenty-seven states have broader voter identification requirements than what HAVA mandates (note, however that the newly passed requirement in Oklahoma does not take effect until July 1, 2011). In these states, all voters are asked to show identification prior to voting. Eight\* of these states specify that voters must show a photo ID; the other nineteen states accept additional forms of identification that do not necessarily include a photo  $(\underline{Table\ 1})$ . In no state is a voter who cannot produce identification turned away from the polls—all states have some sort of recourse for voters without identification to cast a vote. However, in Georgia and Indiana, voters without ID vote a provisional ballot, and must return to election officials within a few days and show a photo ID in order for their ballots to be counted. For specifics on what forms of identification are acceptable and the options available to voters who cannot present identification, see  $\underline{Table\ 2}$ .

#### State Requirements for Voter ID

Table 1: State Requirements for Voter Identification			
States that Request or Require <i>Photo</i> ID	States that Require ID (Photo no Required)		
<u>Florida</u>	<u>Alabama</u>	North Dakota	
<u>Georgia</u>	<u>Alaska</u>	<u>Ohio</u>	
<u>Hawaii</u>	Arizona	Oklahoma*	
<u>Idaho</u>	Arkansas	South Carolina	
<u>Indiana</u>	Colorado	<u>Tennessee</u>	
<u>Louisiana</u>	Connecticut	<u>Texas</u>	
<u>Michigan</u>	<u>Delaware</u>	<u>Utah</u>	
South Dakota	Kentucky	<u>Virginia</u>	
	Missouri	Washington	
	Montana		

<sup>\*</sup> The Oklahoma law takes effect July 1, 2011. There are some who prefer to call Oklahoma a *photo* voter ID state, because most voters will show a photo ID before voting. However, Oklahoma law also permits a voter registration card issued by the appropriate county elections board to serve as proof of identity in lieu of photo ID.

#### **Recent Legislative Action**

Voter ID has been a hot topic in state legislatures over the past decade. Since 2001, more than 700 bills have been introduced in a total of 46 states. A dozen states have passed major legislation during this period, and those bills are summarized in the timeline below.

- , 2003: New voter ID laws were passed in Alabama, Colorado, Montana, North Dakota and South Dakota
- 2005: New voter ID laws were passed in Indiana, New Mexico and Washington; Georgia tightened an existing voter ID law to require photo ID
- 2006: New voter ID law passed in Ohio; Georgia passed a law providing for the issuance of voter ID cards at no cost to registered voters who do not have a driver's license or state-issued ID card; Missouri tightened an existing voter ID law to require photo ID
- 2008: New Mexico relaxed an existing voter ID law, and now allows a voter to satisfy the ID requirement by stating his/her name, address as registered, and year of birth
- , 2009: New voter ID law passed in Utah

Contents

- State Requirements for Voter ID
- Recent Legislative Action
- Recent Litigation
- Details of Voter
   ID Requirements
- For More Information

2010: New voter ID law passed in Idaho; Oklahoma voters approved a voter ID proposal placed on the ballot by the Legislature

#### **Recent Litigation**

Arizona: On October 20, 2006, the U.S. Supreme Court vacated an October 6, 2006 9<sup>th</sup> Circuit Court of Appeals decision that suspended Arizona's requirements pending further litigation. The ID law was in effect for Arizona's 2006 election, and remained in effect in 2008.

Georgia: On October 27, 2006, the 11<sup>th</sup> U.S. Circuit Court of Appeals upheld an injunction barring Georgia from enforcing its photo ID law. The injunction was issued a week earlier by a U.S. District Court judge. Georgia's voter ID requirement was reinstated by a federal judge in mid-2007.

*Indiana*: Photo ID law was upheld by 7<sup>th</sup> Circuit U.S. Court of Appeals on January 4, 2007. The U.S. Supreme Court upheld the ruling on appeal in April 2008. *Michigan*: The Michigan Supreme Court ruled July 18, 2007 that a voter ID law originally passed in 1996 (but never implemented due to a ruling by the state's Attorney General) is constitutional and enforceable.

Missouri: On October 16, 2006, the Missouri State Supreme Court struck down the state's photo ID requirement. ID is still required to vote, but the list of acceptable forms of ID is much broader and includes some forms without a photo.

Ohio: On November 1, 2006, the secretary of state Issued an order suspending the requirement that voters present photo ID at the polls for the November 2006 election. The order did not apply to future elections, and voter ID requirements were in effect for 2008.

#### **Details of Voter Identification Requirements**

Table 2: Details of Voter Identification Requirements			
State	Requirement	Acceptable Forms of ID	Voters Without ID
Alabama §17-11A-1	Each elector shall provide identification to an appropriate election official prior to voting.	Government-issued photo ID  Employee ID card with photo  Alabama college/university ID with photo  Utility bill, bank statement, government check or paycheck  ID card issued by any state or the U.S. government  U.S. passport  Alabama hunting license  Alabama fishing license  Alabama gun permit  FAA-issued pilot's license  U.S. military ID  Birth certificate (certified copy)  Social security card  Naturalization document  Court record of adoption  Court record of name change  Medicaid or Medicare card  Electronic benefits transfer card  Government documents showing name and address of voter	Vote a challenged or provisional ballot or vote, if s/he is identified by two poll workers as an eligible a voter on the poll list, and both poll workers sign the voting sign-in register by the voter's name.
<u>Alaska</u> §15.15.225	Before being allowed to vote, each voter shall exhibit to an election official one form of identification.	<ul> <li>Official voter registration card</li> <li>Driver's license</li> <li>Birth certificate</li> </ul>	An election official may waive the identification requirement if the election official knows the identity of the voter. A voter who cannot exhibit a

		Passport Hunting or fishing license Current utility bill, bank statement, paycheck, government check or other government document with the voter's name and address	required form of identification shall be allowed to vote a questioned ballot.
<u>Arizona</u> §16-579 <b>A</b>	Every qualified elector shall present one form of identification that bears the name, address and photograph of the elector or two different forms of identification that bear the name and address of the elector.	<ul> <li>Valid Arizona driver's license</li> <li>Valid Arizona non-driver identification</li> <li>Tribal enrollment card or other form of tribal identification</li> <li>Valid U.S. federal, state or local government issued identification</li> <li>Utility bill dated within 90 days of the election</li> <li>Bank or credit union statement dated within 90 days of the election</li> <li>Valid Arizona vehicle registration</li> <li>Indian census card</li> <li>Property tax statement</li> <li>Vehicle insurance card</li> <li>Recorder's Certificate</li> </ul>	An elector who does not provide the required identification shall receive a provisional ballot. Provisional ballots are counted only if the elector provides identification to the county recorder by 5pm on the fifth business day after a general election that includes an election for federal office, or by 5pm on the third business day after any other election.
<u>Arkansas</u> §7-5-305(a)(8)	Election officials shall request the voter to provide identification	Driver's license Government-issued photo ID Voter card Social security card Birth certificate U.S. passport Employee ID card Student ID card Arkansas hunting license U.S. military ID card Copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter	If a voter is unable to provide this identification, the election official shall indicate on the precinct voter registration list that the voter did not provide identification.
Colorado §1-1-104(19.5) and 1-7-110	Any eligible elector desiring to vote shall show his or her identification as defined in section 1-1-104 (19.5).	<ul> <li>Colorado driver's license</li> <li>CO Dept. of Revenue ID card</li> <li>U.S. passport</li> <li>Employee ID card with photo issued by the U.S. government, CO state government, or political subdivision of CO</li> <li>Pilot's license</li> </ul>	An eligible elector who is unable to produce identification may cast a provisional ballot.  Elector must mail a photocopy of identification to county clerk in order to have provisional ballot counted. (this paragraph

		photo	added following a Feb. 2006 conversation with an election official; NCSL staff unable to verify this in CO statutes or rules)
Connecticut §9-261	Each elector shall present identification	Social Security card Other preprinted form of identification which shows the elector's name and either the elector's address, signature or photograph	Elector shall, on a form prescribed by the Secretary of the State, write the elector's residential address and date of birth, print the elector's name and sign a statement under penalty of false statement that the elector is the elector whose name appears on the official checklist.
<b>Delaware</b> Tit. 15, §4937	A voter, upon entering the room where an election is being held, shall announce his or her name and address and provide proof of identity	<ul> <li>Photo ID</li> <li>Utility bill</li> <li>Paycheck</li> <li>Any government document with voter's name and address</li> </ul>	In the event the voter does not have proof of identity with them, he or she shall sign an affidavit of affirmation that he or she is the person listed on the election district record.
Florida §101.043	The clerk or inspector shall require each elector, upon entering the polling place, to present a current and valid picture identification as provided in s. 97.0535(3)(a). If the picture identification does not contain the signature of the voter, an additional identification that provides the voter's signature shall be required.	identification	If the elector fails to furnish the required identification, the elector shall be allowed to vote a provisional ballot. The canvassing board shall determine the validity of the ballot by determining whether the elector is entitled to vote at the precinct where the ballot was cast and that the elector had not already cast a ballot in the election.
<u>Georgia</u> §21-2-417	Each elector shall present proper identification to a poll	Georgia driver's license,     even if expired	If you show up to vote and you do not have one of the

	worker at or prior to completion of a voter's certificate at any polling place and prior to such person's admission to the enclosed space at such polling place.	<ul> <li>ID card issued by the state of Georgia or the federal government</li> <li>Free voter ID card issued by the state or county</li> <li>U.S. passport</li> <li>Valid employee ID card containing a photograph from any branch, department, agency, or entity of the U.S. Government, Georgia, or any county, municipality, board, authority or other entity of this state</li> <li>Valid U.S. military identification card</li> <li>Valid tribal photo ID</li> </ul>	acceptable forms of photo identification, you can still vote a provisional ballot. You will have up to two days after the election to present appropriate photo identification at your county registrar's office in order for your provisional ballot to be counted.
<b>Hawaii</b> §11-136	identification if so requested by a precinct official.	Pollworkers request photo ID with a signature. Acceptable types of ID are not specified by law.	If the voter has no identification, the voter will be asked to recite his/her date of birth and residence address to corroborate the information provided in the poll book.
Idaho §34-1106(2), 34-1113, 34-1114	Each elector shall show a valid photo identification or personal identification affidavit.	<ul> <li>Idaho driver's license</li> <li>Idaho ID card</li> <li>Passport</li> <li>ID card, including a photo, issued by an agency of the U.S. government</li> <li>Tribal ID card, including a photograph</li> <li>Student ID card, including a photograph, issued by a high school or accredited institution of higher education within the state of Idaho</li> </ul>	A voter may complete an affidavit in lieu of the personal identification. The affidavit shall be on a form prescribed by the secretary of state and shall require the voter to provide the voter's name and address. The voter shall sign the affidavit. Any person who knowingly provides false, erroneous or inaccurate information on such affidavit shall be guilty of a felony.
Indiana §3-5-2-40.5, 3-10-1-7.2 and 3-11-8-25	shall provide proof of	Specific forms of ID are not listed. ID must be issued by the state of Indiana or the U.S. government and must show the name and photo of the individual.	Voters who are unable or decline to produce proof of identification may vote a provisional ballot. The ballot is counted only if (1) the voter returns to the election board by noon on the Monday after the election and: (A) produces proof of identification; or (B) executes an affidavit stating that the voter cannot obtain proof of identification, because the voter: (i) is indigent; or (ii) has a religious objection to being photographed; and (2) the voter has not been challenged or required to vote a provisional ballot for any other reason.

Kentucky §117.227	Election officers shall confirm the identity of each voter by personal acquaintance or by a document.		When the officers of an election disagree as to the qualifications of a voter or if his right to vote is disputed by a challenger, the voter shall sign a written oath as to his qualifications before he is permitted to vote.
Louisiana §18:562	Each applicant shall identify himself, in the presence and view of the bystanders, and present identification to the commissioners.	Louisiana special ID card     Other generally     recognized picture     identification	If the applicant does not have identification, s/he shall sign an affidavit to that effect before the commissioners, and the applicant shall provide further identification by presenting his current registration certificate, giving his date of birth or providing other information stated in the precinct register that is requested by the commissioners. However, an applicant that is allowed to vote without the picture identification required by this Paragraph is subject to challenge as provided in R.S. 18:565.
Michigan §168.523	Each voter must show a photo ID or sign an affidavit attesting that he or she is not in possession of photo identification.	Michigan personal identification card	An individual who does not possess, or did not bring to the polls, photo ID, may sign an affidavit and vote a regular ballot.
		<ul> <li>Driver's license or personal identification card issued by another state</li> <li>Federal or state government-issued photo</li> </ul>	
		ID  U.S. passport  Military ID with photo  Student ID with photo from a high school or accredited institution of higher education  Tribal ID with photo	
Missouri §115-427	Before receiving a ballot, voters shall establish their identify and eligibility to vote at the polling place by presenting a form of personal identification.	the federal government, state of Missouri, an agency of the state, or a local election authority;  Identification issued by	If an individual does not possess any of these forms of identification, s/he may still cast a ballot if two supervising election judges, one from each major political party, attest they know the person.

		technical school;  A copy of a current utility bill, bank statement, paycheck, government check or other government document that contains the name and address of the voter;  Driver's license or state identification card issued by another state.	
Montana §13-13-114	Before an elector is permitted to receive a ballot or vote, the elector shall present to an election judge a current photo identification showing the elector's name. If the elector does not present photo identification the elector shall present one of several specified documents showing the elector's name and current address.	<ul> <li>School district or postsecondary education photo identification</li> <li>Tribal photo identification</li> </ul>	If the identification presented is insufficient to verify the elector's identity and eligibility to vote or if the elector's name does not appear in the precinct register, the elector may sign the precinct register and cast a provisional ballot.
North Dakota §16.1-05-07	Before delivering a ballot to an individual, the poll clerks shall request the individual to show identification.	identification issued by the state  An official form of identification issued by a tribal government  A form of identification prescribed by the	If an individual offering to vote does not have or refuses to show an appropriate form of identification, the individual may be allowed to vote without being challenged if the individual provides to the election board the individual's date of birth and if a member of the election board or a clerk knows the individual and can personally vouch that the individual is a qualified elector of the precinct. Otherwise, the individual may vote as a challenged voter by executing an affidavit that the challenged individual is a legally qualified elector of the precinct.
Ohio §3503.16(B) (1)(a) and 3505.18(A)(1)	All voters must provide to election officials at the polling place on the day of an election proof of the voter's identity. Also applies to voters requesting and voting an absentee ballot.	Current and valid photo identification, defined as a document that shows the individual's name and current address, includes a photograph, includes an expiration date that has not passed, and was issued by the U.S. government or the state of Ohio  Current utility bill  Current bank statement  Current government check, paycheck or other	A voter who has but declines to provide identification may cast a provisional ballot upon providing a social security number or the last four digits of a social security number. A voter who has neither identification nor a social security number may execute an affidavit to that effect and vote a provisional ballot. A voter who declines to sign the affidavit may still vote a provisional ballot.

		government document	
Oklahoma 26 O.S. 2001, §7-114  Takes effect July 1, 2011	Each person appearing to vote shall provide proof of identity.	"Proof of identity" shall mean a document that satisfies the following:  , Shows a name that substantially conforms to the name in the precinct registry , Shows a photograph , Includes an expiration date that is after the date of the election , Was issued by the United States, state of Oklahoma, or a federally recognized Indian tribe or nation	A person who declines or is unable to produce proof of identity may sign a statement under oath swearing or affirming that the person is the person identified on the precinct registry and cast a provisional ballot.
		A voter registration card issued by the appropriate county elections board may serve as proof of identity without meeting all of the above requirements.	
South Carolina §7-13-710	When any person presents himself to vote, he shall produce his valid South Carolina driver's license or other form of identification containing a photograph issued by the Department of Motor Vehicles, if he is not licensed to drive, or the written notification of registration.	Voter registration certificate  South Carolina driver's license  South Carolina Dept. of Motor Vehicles photo ID card	Voters without ID may be permitted to vote a provisional ballot. This varies from county to county. Whether the provisional ballot is counted is at the discretion of the county commissioners at the provisional ballot hearing.
South <u>Dakota</u> §12-18-6.1 and 6.2	When a voter is requesting a ballot, the voter shall present a valid form of personal identification.	<ul> <li>South Dakota driver's license or nondriver identification card</li> <li>U.S. passport</li> <li>Photo ID issued by an agency of the U.S. government</li> <li>Tribal ID card, including a photo</li> <li>Student ID card, including a photo, issued by an accredited South Dakota school</li> </ul>	If a voter is not able to present a form of personal identification as required, the voter may complete an affidavit in lieu of the personal identification. The affidavit shall require the voter to provide his or her name and address. The voter shall sign the affidavit under penalty of perjury.
<u>Tennessee</u> §2-7-112	A voter must sign an application for a ballot. The voter's signature and information on the signature list is compared with other evidence of identification supplied by the voter.	, Voter registration certificate , Tennessee driver's license , Social Security card , Credit card bearing voter's signature , Other document bearing voter's signature	If a voter is unable to present any evidence of identification, the voter shall be required to execute an affidavit of identity on a form provided by the county election commission.
Texas Election Code §63.001 et seq.	On offering to vote, a voter must present the voter's voter registration certificate	Voter registration certificate Driver's license	A voter who does not present a voter registration certificate when offering to vote, but

8 of 10

	to an election officer at the polling place.	Department of Public Safety ID card  A form of ID containing the person's photo that establishes the person's identity  A birth certificate or other document confirming birth that is admissible in a court of law and establishes the person's identity  U.S. citizenship papers  A U.S. passport  Official mail addressed to the person, by name, from a governmental entity  A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the person's name and address  Any other form of ID prescribed by the secretary of state	whose name is on the list of registered voters for the precinct in which the voter is offering to vote, shall be accepted for voting if the voter executes an affidavit stating that the voter does not have the voter's voter registration certificate in the voter's possession and the voter presents other proof of identification. A voter who does not present a voter registration certificate and cannot present other identification may vote a provisional ballot. A voter who does not present a voter registration certificate and whose name is not on the list of registered voters may vote a provisional ballot.
Utah §20A-1-102(76), 20A-3-104	A voter shall present valid voter identification to one of the poll workers.	Current valid UT driver's license Current valid identification card issued by the state or federal government UT concealed weapon permit US. passport Current valid U.S. military ID card Bureau of Indian Affairs card Tribal treat card Tribal ID card  OR Two forms of ID that bear the name of the voter and provide evidence that the voter resides in the precinct	The voter may cast a provisional ballot as provided by §20A-3-105.5
<u>Virginia</u> §24.2-643(B)	The officer shall ask the voter to present any one of the specified forms of identification.	<ul> <li>Virginia voter registration card</li> <li>Social Security card</li> <li>Virginia driver's license</li> <li>Any other identification card issued by a government agency of the Commonwealth, one of its political subdivisions, or the United States</li> </ul>	If a voter is entitled to vote except that he is unable to present one of the forms of identification listed above, he shall be allowed to vote after signing a statement, subject to felony penalties for false statements, that he is the named registered voter who he claims to be.

		<ul> <li>Employee identification card containing a photograph</li> </ul>	
<b>Washington</b> §29A.44.205	Any person desiring to vote at any primary or election is required to provide identification to the election officer before signing the poll book.	such as a driver's license or state identification card, student identification	Any individual who desires to vote in person but cannot provide identification as required by this section shall be issued a provisional ballot.

#### For More Information

For more information on the issue of voter identification, contact NCSL's elections staff.

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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 News1 states that Amish believers object to carrying a governmentissued 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 lic

Ethics and Elec	ctions Committee
Attachment	2

Date 3-3-11

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).<sup>2</sup> 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 documents<sup>3</sup> 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.

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." 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."

#### 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

http://www.amlshnews.com/amlsharticles/amlshand%20photos.htm accessed 10 January 2011

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

<sup>&</sup>lt;sup>3</sup>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

<sup>&</sup>lt;sup>4</sup>Employment Div., Ore. Dept. of Human Res. V. Smlth, 494 U.S. 872 (1990), quoting U.S. v. Lee, 455 U.S. 252, 263 n. 3 (1982)

<sup>&</sup>lt;sup>6</sup> Brougher, Cynthla. 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.
- Machine-readable technology on the back of the card, pursuant to Sec. 37.19 of this subpart.
- (j) Date of transaction.

- (k) Expiration date.
- (I) 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--
  - 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.

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cation to vote.

The measure would also require new voters to prove U.S. citizenship when they register, by providing birth certificates, passports and/or other documents such as marriage licenses.

The House passed the bill by an 83-to-36 vote Friday, and it now goes to the Senate.

Kobach acknowledged that several of the complaints in Sedgwick County did not indicate voter fraud. Other allegations that he cited, such as disruption at polling places, aren't addressed by his

But he said that when it comes to noncitizens voting, "it doesn't matter that much to me if people did it out of ignorance or maliciousness, it's still canceling out the vote of a U.S. citizen.

"Even if it's a mistake, it's still not victimless."

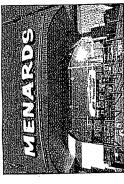
#### Cases investigated

Four of the cases Kobach cited were related incidents involving a single polling place — Holy Cross Lutheran Church — in the 2006 election in which Democrat Rai Goyle unseated incumbent Rep. Bonnie Huy, R-Wichita.

Those allegations were detailed in a Republican Party complaint filed after the election. All were investigated, and District Attorney Nola Foulston found that no crimes had been committed. Foulston is a Democrat.

#### **Discounted ballots**

Kobach also cited multiple cases of "ballot applications signed by a parent, spouse or relative," which he characterized as "perjury, impersonation of a voter." In addition, he cited a case of a "pop he cited a case of a "nonmatching signature on an advance hallot "







# CONTROL OF only 2 cases of vote fraud in county

BY DION LEFLER Eagle Topeka bureau

Sedgwick County election officials say they know of only two cases locally of people who weren't eligible to vote casting a ballot.

Most of the alleged voting fraud and irregularities in Sedgwick County that Secretary of State Kris Kobach has reported to state legislators were either groundless or they were honest mistakes by voters and their families, according to county officials.

Kobach is asking the Legislature to require all voters to show governmentissued photo identification when voting to prevent fraud and voting by noncitizens.

In one of the two cases in Sedgwick County, a noncitizen who voted in a city primary election has been placed in a misdemeanor diversion program that will likely lead to the charge being dismissed. Another noncitizen who voted turned in her voting record with her application for citizenship, apparently thinking it would help show what a good citizen she would be. The outcome of that case is unknown.

Kobach said that when he presented the report on voter fraud to the House Elections Committee, he tried to make it clear that it was a summary of complaints, not actual violations, and that a bill he's proposing to address voter fraud would also help prevent innocent mistakes.

The allegations were part of a sheaf of complaints that Kobach presented to the House Elections Committee under the heading "Known Reported Incidents of

Please see FRAUD, Page 5A

Those cases all resulted in the questioned ballots not being counted, Kobach's

report said.

Sedgwick County Election Commissioner Bill Gale said such cases crop up in almost every election and that many involve family members seeking to assist elderly and infirm relatives, or spouses accidentally mixing up their ballots at home.

"More often what happens is it's not even signed at all or a spouse signed it in error,"

Gale said.

He said he has seen no cases that he would consider to be attempted fraud or

impersonation.

Gale said another common problem is that some elderly voters send in mail ballots and then forget, and show up to vote at the polls on election day. He said they are allowed to cast provisional ballots, which are checked against the mailed ballots and rejected if the voter voted twice.

Gale said he had no knowledge about an allegation listed by Kobach that a "parent voted for college student by power of attorney." Kobach's report said the provisional ballot was not counted.

"I couldn't figure out that

one," Gale said.

Gale said he also was puzzled by a complaint on Kobach's list that in 2006, a "candidate paid \$50 to \$75 to deliver 20 votes each," which he characterized as "election bribery." Gale said paying people to bring voters to the polls is not illegal.

Brad Bryant, assistant deputy secretary of state, said that complaint came directly

to the state office.

He said a woman and her lawyer reported to him and then-Secretary of State Ron Thornburgh that a candidate was paying people to bring in votes in 2006. The woman later said she suspected that money had been given to actual voters, although no proof was provided, he said.

Bryant would not identify the candidate or the race.

He agreed with Gale that it is legal to pay people to round up voters and bring them to the polls, as long as the voters themselves don't get paid.

#### Noncitizen ballots

There were two cases cited by Kobach of noncitizens casting ballots...

In 2010, the report said, a non-U.S. citizen voted in 2000, 2002, 2004, 2006 and 2008. " " halege

Gale said that case involved a call he got from the Department of Homeland Security about a woman who was applying for citizenship.

"Apparently she had 🦠 brought in something she had gotten from us with her voting history," Gale said.
"Apparently, she thought it was something that would help her achieve U.S. citizenship."

He said the woman's actions indicated it was a case of confusion, not intent to

commit a crime.

Gale said he didn't know the final outcome, but said "he (the Homeland Security agent) mentioned it was a deportable offense."

Of the cases cited by Kobach, only one resulted in local prosecution, said Georgia Cole, spokeswoman for Foulston.

Gale said that case arose when the Secretary of State's Office checked the voter registration roll against the list of temporary driver's licenses, which are issued to noncitizens so they can drive while they're in the country.

That sweep resulted in eight matches, but only one had actually cast a ballot — in the 2009 Wichita municipal primary, Gale said.

Cole said the woman, who is from the Philippines, was charged with a misdemeanor and recently entered a diversion program. The charge will be dismissed if the woman stays out of trouble for 12 months, she said.

Kobach said he knows of no organized fraud in the Wichita area. However, he

said there was a case in Kansas City, Mo., where a man was alleged to have registered and coached about 50 Somali nationals to vote for a Democratic primary candidate who won by one vote.

He said the cases that resulted from the driver's license match addressed only those legal immigrants who had chosen to get a license. He said there are potentially many more instances involving noncitizen immigrants, both legal and illegal.

Kobach also said that some smugglers of illegal immigrants register them to vote using fictitious names, as part of a scam to convince them they're getting useful identifi

cation documents.

Requiring proof of citizen ship of new voters won't clear the rolls of fake names, but it will prevent the problem from getting worse, Kobach said.

He said it's similar to having fictional voters wind up on the rolls because workers in registration drives turn in cards with fake names to get more money.

"The problem is every one of those names is a platform to commit voter fraud," he said.

Reach Dion Lefler at 785-296-