

MAINE STATE LEGISLATURE

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Report of the

**Working Group Convened by the Secretary of State to
Examine Laws Governing Eligibility and Documentation
Requirements for Driver's Licenses and Non-driver
Identification Cards**



Prepared by:

**Maine Department of the Secretary of State
pursuant to Chapter 24 of the 2007 Resolves of Maine**

December 5, 2007



TABLE OF CONTENTS

Section 1 – Overview

Section 2 – History

Section 3 – Discussion

Section 4 – Recommendations

Section 5 – Conclusion

Appendix A: RESOLVE Chapter 24, 123rd Maine State Legislature

Appendix B: Recommended Legislation



1. OVERVIEW

PURSUANT to the provisions of Chapter 24 of the Resolves of Maine, as enacted by the Legislature during the First Regular Session of the 123rd Legislature, Secretary of State **Matthew Dunlap** invited the following to convene with him at the Capitol to discuss requirements for the issuance of licenses and identification cards:

Hon. William Browne, R-Vassalboro and Ranking Minority Member, Joint Standing Committee on Transportation; **Beth Stickney, Esq.**, Executive Director, Immigrant Legal Advocacy Project; **Jennifer Pease**, Branch Manager, Portland Office, Bureau of Motor Vehicles; **Therese Cahill Low**, Director of Constituent Services, Department of the Secretary of State; and **Robert E. O'Connell**, Director of the Division of License Services, Bureau of Motor Vehicles.

2. HISTORY

In 2006, in cooperation with Federal officials, agents with the Office of Investigations within the Bureau of Motor Vehicles investigated allegations of transport of possible illegal aliens originating from Poland to Maine from New York for the purpose of obtaining driver licenses and non-driver identification cards. This investigation, along with parallel efforts to improve the security of Maine credentials¹, prompted the Secretary of State to submit LD 812, *An Act to Amend the Driver's License Laws* sponsored by Rep. Boyd Marley, D-Portland. At the same time, Rep. William Browne, R-Vassalboro, submitted LD 209, *An Act to Require That a Person Be a Maine Resident in Order to Obtain a Maine Driver's License*.

The goals of the two bills were substantially the same; to halt the issuance of Maine credentials to persons not actually residing in Maine. The bills differed in that LD 812 allowed specific exemptions for college students, military personnel and their families, while LD 209 offered no such exceptions.

After careful deliberation, which included cautionary testimony about the care that should be taken to not statutorily disengage eligible individuals from services to which they are entitled because of excessive paperwork, LD 812 was amended to the above-referenced resolve and LD 209 was committed to the legislative files.

¹ During the 122nd Legislature, statutory changes were made in the Motor Vehicle laws that prohibited acceptance by the Secretary of State for verification of the identity of an applicant for a credential any expired visa, passport, expired document of foreign origin, or passport with an elapsed departure date. Also, the Secretary of State was directed in statute to collect the Social Security number of applicants unless written proof of ineligibility was provided (MRSA Title 29-A Section 1301 subsections 10 and 6, respectively).



3. DISCUSSION

The working group met twice; notice of these meetings was forwarded to Karen Nadeau-Drillen, Transportation Committee Analyst with the Office of Policy and Legal Analysis in accordance with provisions of the resolve.

The work of the group was broken into two parts; the issue of residency and the issue of documentation. The Resolve directed the group to “at a minimum, examine issues determining legal presence status, documentation requirements, method of verification, the need for exceptions or provisions for special circumstances....”

The group agreed the affirmative determination around issues of legal presence and immigration law were beyond the scope of the original bills.² Determination of legal presence and verifying same would require complex processes and broad statutory revisions. Since both bills had the goal of taking the relatively simpler step of establishing a requirement of residency in order to obtain state credentials, the working group decided its recommendations should focus on parameters to increase credential security in that area alone.

There is a broad spectrum of constitutional, statutory, and regulatory requirements for the determination of residency for official purposes. Article III, Part First, Section 4 of the Maine Constitution describes in the residency requirements for legislators that they “...have been a resident in this State one year; and for the 3 months next preceding the time of this person’s election shall have been, and, during the period for which elected, shall continue to be a resident in the district which that person represents.” Voters, on the other hand, are considered qualified as long as they are 18 years of age and vote in the “city, town or plantation where his or her residence has been established...” (Article II, Section I, Maine Constitution). The question over what constitutes establishing residency for voting purposes has been articulated through numerous court cases (*Dunn v. Blumstein*, 405 U.S. 330 (1973), *Williams v. Salerno*, U.S. Court of Appeals 2nd Circuit 792 F. 2d 323; 1986, *Levy v. Scranton*, U.S. District Court of New York 780 F. Supp. 897; 1991) and need not be fully explicated here.

Perhaps the most stringent requirements for residency are contained in Title 12 MRSA Section 7001 subsection 32. After living in Maine for three months, a resident hunting or fishing license can only be obtained by a person who:

- A. If registered to vote, registered in Maine;
- B. If licensed to drive a motor vehicle, made application for a Maine motor vehicle operator’s license;
- C. If owning a motor vehicle or vehicles located within the State, registered each such vehicle in Maine; and
- D. Complied with the state income tax laws.

² It was noted in discussion that the Legislature had adopted LD 1138, *An Act to Prohibit Maine From Participating in the Federal Real ID Act of 2005*. In the language of Chapter 251 of the Laws of Maine, 2007, “The Secretary of State may not amend the procedures for applying for a driver’s license of non-driver identification card under this chapter in a manner designed to conform to the federal Real ID Act of 2005.” The Real ID Act carries under its auspices significant legal presence requirements.



These provisions are supported by a sworn statement drawn from these requirements which accompanies the signature of an applicant for resident licenses proffered by the Maine Department of Inland Fisheries and Wildlife:

“By signing this statement the applicant verifies that the representations herein are true. By making false statements on this document, I realize I am committing a Class D crime punishable under Maine law.”

The working group considered these examples, and focused its efforts in two areas; *documentation* and *exceptions*.

The Secretary of State currently establishes procedures and policies to establish criteria of documentation required for presentation in order to obtain a Maine credential. Those criteria are designed to accommodate the many nuances of subjective cases of otherwise qualified individuals lacking official birth certificates, etc. that would immediately satisfy the expectations of the law. Contained within those criteria are documents deemed acceptable as *exceptions* to normal administrative procedure.

Concern was voiced that establishing such criteria for residency in statute may, in unforeseen circumstances, either leave open loopholes that may inadvertently render the spirit of the law impotent or stand as an insurmountable obstacle for individuals who clearly would be in compliance with the intent of the law, but whose only proof of such would neither meet the explicit statutory requirements, nor even lie within the penumbra of statutorily prescribed documents.

Discussion also centered on *waiting periods*. While many in the working group expressed concerns that a waiting period may not accomplish a meaningful purpose and might further complicate the exceptions process, it is noteworthy in the above examples that, in fact, waiting periods are common in Maine law, with the exception resident in the example of the voting franchise. The Joint Standing Committee on Transportation should weigh this question carefully in view of the difficulties such a requirement may pose for law-abiding motorists, and whether accompanying waivers or exceptions would solve consumer problems or render the intent of a waiting period requirement academic. The working group noted that such systems—the recently-repealed Insurance Verification System, for example—often do more to frustrate and inconvenience the general public than serve as a deterrent to criminal activity. After much discussion, the working group recommends *against* establishing waiting periods for residents to obtain a Maine credential.

Projecting a process to overcome a lack of such documentation as would meet the statutory expectations inherent in implementing a residency requirement, the working group discussed at some length the utilization of affidavits by business associates, clergy, landlords, etc. of an applicant. Notarized documents were discussed, but the working group preferred a supplied form that could be produced by the Secretary of State that would include contact information of the individual completing the affidavit. The model of the sworn statement on the hunting license was seen as viable. Thus, an individual living in an apartment with several roommates, but with none of the lease agreements, utility bills or similar address specific documents in their name, could have affidavits from the landlord and an employer that would be deemed sufficient. The group



agreed that specific contact information should be included in this document to assist in verifying its authenticity.

4. RECOMMENDATIONS

LD 812 and LD 209 had been introduced with the intent of establishing a credible process for determining Maine residency with easily established criteria. The point of reference that was used was the criteria in common use for the establishment of residency for the voting franchise; presentation of a utility bill with the individual's name on it, a rent receipt or rental agreement, or similar documentation that showed residence in Maine. The Resolve was drafted to carefully consider that such requirements not adversely impact "the needs of migrant workers and others who may be affected by changes in eligibility requirements or documentation standards..."

The working group carefully considered this directive, and pursuant to its deliberations, recommends the following to the Joint Standing Committee on Transportation:

1. That the State of Maine issue driver's licenses and non-driver identification cards only to Maine residents; with the exceptions described in the original language of LD 812 of college students, military personnel and their families, and without subsection to a waiting period.
2. That the Secretary of State be directed to develop policies and procedures for acceptable, verifiable residency documentation for the implementation of the proposed subsection, to include but not be limited to acceptable forms of affidavit to be developed by the Secretary of State.
3. That the Secretary of State report to the committee having jurisdiction over matters relating to transportation during the First Regular Session of the 124th Legislature on the implementation of the proposed law.
4. That the Committee, pursuant to the authorization described in Section 2 of Chapter 24 of the Resolves of Maine, submit legislation implementing these recommendations to the Second Regular Session of the 123rd Legislature.

The Secretary of State respectfully submits these recommendations with thanks to the participants, and to the committee for its demonstrated interest in an important policy matter.

5. CONCLUSION

The security of Maine credentials, as is true across the United States and the rest of the world, is fraught with risk emergence. Concerns that legitimacy can be brought to potential terrorists or foreign nationals lacking Federal clearance to live and conduct business within the borders of the United States drives public debate, while criminals who specialize in identity theft or theft and fraud utilizing false ID's continue to perpetrate their crimes at an alarmingly growing rate. While it should be recognized that statutory revisions cannot possibly prevent every instance of fraud,



the revising of statutes to limit exposure by fraud by staying abreast of modern trends is absolutely necessary for the proper enforcement of the law, for the meeting of public expectations as to the relative security of their credentials, and for the keeping of the public trust. Such conditions warrant nothing less than thorough and thoughtful review of proposals as those contained within bills such as LD 209 and LD 812.



APPENDIX A: RESOLVE Chapter 125, 123rd Maine State Legislature

Resolve

123rd Legislature

First Regular Session

Chapter 24

H.P. 612 - L.D. 812

Resolve, To Direct the Secretary of State To Examine Driver's License Laws

Sec. 1 Secretary of State to examine laws. Resolved: That the Secretary of State shall establish a working group to examine the laws governing eligibility and documentation requirements for applicants for driver's licenses and nondriver identification cards. The Secretary of State shall seek to include in the working group persons with appropriate and relevant expertise or knowledge with respect to the following: immigration law, the needs and interests of migrant workers and others who may be affected by changes in eligibility requirements or documentation standards and issues related to the issuance of driver's licenses or nondriver identification cards to illegal aliens or persons who are not Maine residents. The working group shall develop recommendations with respect to limiting eligibility for driver's licenses and nondriver identification cards to Maine residents and to persons with legal presence status in the United States. The working group shall, at a minimum, examine issues related to standards of residency and proof of residency, standards for determining legal presence status, documentation requirements, methods of verification, the need for exceptions or provisions for special circumstances and the costs of implementing and enforcing such standards and limitations. The Secretary of State shall provide notice of meetings of the working group to the Joint Standing Committee on Transportation. The Secretary of State shall report the findings and recommendations of the working group to the Joint Standing Committee on Transportation no later than January 15, 2008. The Secretary of State shall include with the report draft legislation to make appropriate changes to the eligibility and documentation requirements for applicants for driver's licenses and nondriver identification cards based on the findings and recommendations of the working group; and be it further

Sec. 2 Authorization to submit legislation. Resolved: That the Joint Standing Committee on Transportation may submit a bill related to the subject matter of the working group's report under section 1 to the Second Regular Session of the 123rd Legislature.

Effective September 20, 2007



APPENDIX B: Suggested Draft Legislation
To implement the recommendations of the working group.

An Act To Require That a Person Be a Maine Resident in Order To Be Issued a Maine Driver's License

Sec. 1.29-A MRSA §1301, sub-§ 11 is enacted to read:

11. Residency requirement. A license may only be issued to a resident. An applicant for a license must provide the residential address within the State where the applicant resides.

Sec. 2. 29-A MRSA § 1410, sub-§1, as enacted by PL 1997, c. 437, § 40, is amended to read:

1. Application. Any person who is a ~~state resident or a nonresident temporarily domiciled in~~ person on active duty in the United States Armed Forces, the spouse or child of a nonresident person on active duty in the United States Armed Forces or a student enrolled in a university, college or school within the State may apply for an official state nondriver identification card. The application must be on a form provided by the Secretary of State and include ~~any~~ supporting documents and information the Secretary of State by rule requires ~~required~~ to establish identity and residency.

A. The application form must include, directly above the signature line, the following notice to the applicant: "I understand that knowingly supplying false information on this form is a Class D crime under Title 17-A, punishable by confinement of up to 364 days or by monetary fine of up to \$2,000, or both."

SUMMARY



This bill implements the recommendations of the working group convened by the Secretary of State to examine laws governing eligibility and documentation requirements for driver's licenses and non-driver identification cards pursuant to Chapter 24 of the 2007 Resolves of Maine. The bill restricts the issuance of driver's licenses to Maine residents. Nondriver identification cards may be issued to residents of the State and nonresident students and persons on active military duty and the spouses and children of persons on active military duty.