

PROPOSED RESOLUTION SUPPORTING EQUAL ACCESS TO STATE- ISSUED IDENTIFICATION DOCUMENTATION

Issue

Should the State Bar of Michigan adopt a position in favor of the implementation of procedures or administrative rules designed to ensure that, upon application and payment or waiver of any applicable fee, an official state personal identification card is issued to any Michigan resident who is "legally present" in the United States (as that term is defined in MCL 28.291), and who otherwise qualifies for the card?

Synopsis

All federal courts, many state administrative buildings and some state court buildings require proof of identity for admittance. In the post-911 security environment, the required identification document is increasingly a state-issued driver's license or official state personal identification card ("state ID"). Michigan's notary law also mandates that Notary Publics determine the identity of individuals for whom they notarize signatures on documents. Some Michigan law enforcement agencies report employing a higher level of scrutiny of non-citizen crime victims who cannot present adequate proof of identity upon request.

Access to justice must include free and equal access to the forums where justice is administered, whether one is an applicant for a public benefit, a witness to a crime or a litigant in an adjudicatory proceeding. All Michigan residents should have an equal ability to obtain vital documents and public services, without being subjected to higher scrutiny, delays or denials due to their "lack of ID."

Background

The documentary requirements imposed by the Michigan Secretary of State (MSOS) to obtain a state ID are the same as those for applying for a driver's license. These include presenting proof of: (1) a valid Social Security number (or letter of ineligibility from the SSA); (2) identity; (3) Michigan residency; and (4) U.S. citizenship or legal presence in the United States. [See Form SOS-428 (01/11) at www.michigan.gov/sos.]

The Michigan Legislature adopted a broad definition of "legal presence" when amending the Motor Vehicle Code and the state personal identification card law in 2008. MCL 257.307(1)(b); 28.291(3).¹ Nonetheless, non-citizen Michigan residents are routinely denied state IDs because of extra-legal limitations on the acceptable immigration documents required by the secretary of state to prove "legal presence."

The law also requires the secretary of state to promulgate rules implementing the definition of "legally present" – but no such rules have been adopted to provide guidance in a manner consistent with the state law. Instead, several categories of non-citizens who are

¹ "If the applicant is not a citizen of the United States, the applicant shall provide documents demonstrating his or her legal presence in the United States. A person legally present in the United States includes, but is not limited to, a person authorized by the United States government for employment in the United States, a person with nonimmigrant status authorized under federal law, and a person who is the beneficiary of an approved immigrant visa petition or an approved labor certification. The secretary of state shall adopt rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, as are necessary for the administration of this subdivision."

“legally present” as defined by the Legislature, and who meet all the other criteria, are systematically denied a state ID because their particular proof of lawful presence does not fall with the limited categories enumerated in the secretary of state procedures.

According to MCL 28.291(3), “A determination by the secretary of state that an applicant is not legally present in the United States may be appealed under section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631.” Although this provision theoretically permits case-by-case appeals to circuit court, it is more efficient and in the interests of justice for the secretary of state to implement fair and comprehensive policies recognizing any and all of the potential statuses and official forms of documentation accorded “legally present” applicants.

The following are some common categories of proof omitted from the Michigan secretary of state’s official list of acceptable documents for proving “legal presence”:

- The list requires that a Legal Permanent Resident (“green-card” holder) submit a card that was issued after December 1997. However, hundreds of thousands of legal residents nationwide possess currently-valid “green-cards” that were issued before December 1997.
- The list omits documents that an immigrant granted humanitarian relief would possess. The federal immigration agency, USCIS, grants “Deferred Action” status to battered immigrants who have been approved under the Violence Against Women Act (“VAWA”). USCIS also grants Deferred Action status to immigrant victims of serious crimes who are in a waiting period before completing the final step in their process. The current MSOS list contains no provision for proving such Deferred Action status.
- Immigrants granted asylum and refugee status often flee their home countries without important documents, including passports. The U.S. government has recognized the bona fide nature of their claims and granted them legal status, but the MSOS list does not reference common documents that they would have been given by the U.S. government.
- The MSOS does not permit “the beneficiary of an approved immigrant visa petition” to obtain either a driver’s license or a state ID. The federal government has reviewed and approved a petition filed on such a beneficiary’s behalf, but the MSOS categorically excludes such immigrants from obtaining a state ID, despite the state legislature explicitly designating this category of immigrants as being eligible for a state ID.
- All legal immigrants whose status does not afford them any of the specific items of documentation on the MSOS list face major obstacles in trying to obtain a state ID. Common examples include immigrants granted relief in Immigration Court, and immigrants whose visa or I-94 has expired and who timely submit an application automatically extending their legal status.

Keller-permissible Rationale

Pursuant to order of the Supreme Court (Admin. Order No. 2004-01), the SBM may use the mandatory dues of members to improve the functioning of the courts and increase the availability of legal services to society. The Bar has previously advanced a position in favor of legislation to enable paroled prisoners to more easily obtain driver's licenses and state personal ID cards (HB 5176-5180 of 2009). In adopting this position, the SBM implicitly recognized that, "Without a license or ID card, it is virtually impossible for [these] people to obtain housing, secure employment, or even open a bank account." [Legislative Analysis, HB 5176-5180 of 2009, House Fiscal Agency, p. 6.]

This proposal also falls within the scope of Keller-permissible activities of improving the functioning of the courts and increasing the availability of legal services. Unlike other Michigan residents, "legally present" immigrants without state IDs encounter additional barriers when attempting to access federal courts and state and federal administrative offices where proof of identity is required to enter. Michigan's Notary Law specifically designates "a current license [or] identification card" as the preferred evidence that a person is the actual person signing legal documents, such as affidavits commonly utilized in litigation and administrative matters. [MCL 55.285] Lack of a state ID creates a significant barrier to those who need to have certain documents notarized. Additionally, Legal Aid staff around the state report that government-issued photo IDs are required by some hospitals before issuing birth records to non-citizen parents, and that some clerks of court demand photo IDs before accepting requests for waiver of fees. A position in favor of supplying official personal identification cards to otherwise-qualified Michigan residents who are "legally present" in the United States will directly improve the functioning of the courts and the availability of legal services for such individuals who are currently denied an official state ID.

Opposition

None known.

History and Prior Action by Representative Assembly

This proposal was recommended by the Committee on Justice Initiatives. An earlier draft was reviewed at the September 2010 Representative Assembly and was referred to the Drafting Committee on September 30, 2010. This proposal is the result of that referral.

Fiscal and Staffing Impact on State Bar of Michigan

None known.

STATE BAR OF MICHIGAN POSITION By vote of the Representative Assembly on April 9, 2011

Should the Representative Assembly adopt the following resolution to support equal access to identification documentation for all qualified Michigan residents?

RESOLVED, that the State Bar of Michigan shall adopt a position in favor of the implementation of procedures or administrative rules designed to ensure that, upon application and payment or waiver of any applicable fee, an official state personal identification card is issued to any Michigan resident who is "legally present" in the United States (as that term is defined in MCL 28.291), and who otherwise qualifies for the card?

(a) Yes

or

(b) No

STATE PERSONAL IDENTIFICATION CARD (EXCERPT)
Act 222 of 1972

28.291 Official state personal identification card; application; requirements; limitation; applicant not citizen of United States; disclosure or display of social security number; exception; agreements with federal government; termination of official state personal identification card issued by another state; duties of secretary of state.

Sec. 1. (1) A person who is a resident of this state may apply to the department of state for an official state personal identification card. Upon application, the applicant shall supply a photographic identity document, a birth certificate or other nonphotographic identity document, and other sufficient documents as the secretary of state may require to verify the identity and citizenship of the applicant. If an applicant for an official state personal identification card is not a citizen of the United States, the applicant shall supply a photographic identity document and other sufficient documents to verify the identity of the applicant and the applicant's legal presence in the United States under subsection (3). The documents required under this subsection shall include the applicant's full legal name, date of birth, and address and residency and demonstrate that the applicant is a citizen of the United States or is legally present in the United States. If the applicant's full legal name differs from the name of the applicant that appears on a document presented under this subsection, the applicant shall present documents to verify his or her current full legal name. An application for a state personal identification card shall be made in a manner prescribed by the secretary of state and shall contain the applicant's full legal name, date of birth, residence address, height, sex, eye color, signature, intent to be an organ donor, other information required or permitted on the official state personal identification card and, only to the extent to comply with federal law, the applicant's social security number. The applicant may provide a mailing address if the applicant receives mail at an address different from his or her residence address.

(2) The secretary of state shall not issue an official state personal identification card to a person who holds an operator's or chauffeur's license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, unless the license has been suspended, revoked, or restricted.

(3) If the applicant is not a citizen of the United States, the applicant shall provide documents demonstrating his or her legal presence in the United States. A person legally present in the United States includes, but is not limited to, a person authorized by the United States government for employment in the United States, a person with nonimmigrant status authorized under federal law, and a person who is the beneficiary of an approved immigrant visa petition or an approved labor certification. The secretary of state shall adopt rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, as are necessary for the administration of this subsection. A determination by the secretary of state that an applicant is not legally present in the United States may be appealed under section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631.

(4) The secretary of state shall not disclose a social security number obtained under subsection (1) to another person except for use for 1 or more of the following purposes:

(a) Compliance with 49 USC 31301 to 31317 and regulations and rules related to this act.

(b) To carry out the purposes of section 466(a) of the social security act, 42 USC 666, in connection with matters relating to paternity, child support, or overdue child support.

(c) With the department of community health, for comparison with vital records maintained by the department of community health under part 28 of the public health code, 1978 PA 368, MCL 333.2801 to 333.2899.

(d) As otherwise required by law.

(5) The secretary of state shall not display a person's social security number on the person's official state personal identification card.

(6) A requirement under this section to include a social security number on an application does not apply to an applicant who demonstrates he or she is exempt under law from obtaining a social security number.

(7) The secretary of state, with the approval of the state administrative board created under 1921 PA 2, MCL 17.1 to 17.3, may enter into agreements with the United States government to verify whether an applicant for an official state personal identification card under this section who is not a citizen of the United States is authorized under federal law to be present in the United States.

(8) The secretary of state shall not issue an official state personal identification card to a person holding an official state personal identification card issued by another state without confirmation that the person is terminating or has terminated the official state personal identification card issued by the other state.

(9) The secretary of state shall do all of the following:

(a) Ensure the physical security of locations where official state personal identification cards are produced

and the security of document materials and papers from which official state personal identification cards are produced.

(b) Subject all persons authorized to manufacture or produce official state personal identification cards and all persons who have the ability to affect the identity information that appears on official state personal identification cards to appropriate security clearance requirements. The security requirements of this subdivision and subdivision (a) may require that official state personal identification cards be manufactured or produced in this state.

(c) Provide fraudulent document recognition programs to department of state employees engaged in the issuance of official state personal identification cards.

History: 1972, Act 222, Imd. Eff. July 25, 1972;—Am. 1975, Act 307, Eff. Jan. 1, 1976;—Am. 1997, Act 99, Imd. Eff. Aug. 7, 1997;—Am. 2005, Act 143, Imd. Eff. Sept. 29, 2005;—Am. 2008, Act 31, Imd. Eff. Mar. 13, 2008.