

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4500/1dn
JTK&ARG:cjs:jf

March 22, 2010

Representative Stone:

1. Because this draft, in proposed s. 343.505 (1) (b), potentially permits any resident citizen who is at least 18 years of age to obtain an identification certificate, the draft will enable some individuals, such as convicted felons whose voting rights have not been restored, to obtain a certificate, and will also preclude some individuals, such as former residents who do not vote in another state and who may qualify to vote here, from obtaining a certificate. To dovetail the requirements for obtaining a certificate with the requirements for voting would require both changing the draft as well as cross training of DOT personnel to properly determine voting qualifications. We have not taken that step in this draft. Please let us know if you would like to see this treatment changed.
2. In proposed s. 343.505 (4) (a) 1., a fee of \$18 is imposed for obtaining an identification certificate unless an applicant requests that the fee be waived. [This is the same fee that applicants for Wisconsin identification cards currently pay.] Because, as we understand it, the certificates will be used primarily for voting purposes, you may wish to issue the certificates without charge if requested or without charge as a matter of course.
3. In proposed s. 343.505 (2) (a), this draft creates requirements for an applicant to obtain an identification certificate that extend beyond the requirements for voter registration under s. 6.33 (1), stats. While these requirements parallel many of the requirements for obtaining a Wisconsin identification card and they do not incorporate any of the federal "Real ID" requirements that we recently enacted, if the certificates are to be used primarily for voting purposes, you may wish to consider simplifying the requirements.
4. Voter photo ID laws have recently been enacted in at least seven states. These laws all contain different requirements and exemptions and none is substantially identical to this draft. There has been litigation in both state and federal courts regarding various issues pertaining to these laws. Some are constitutional issues unique to particular states, some are federal constitutional issues, and some are issues arising under federal law. The courts have not agreed regarding the validity of these laws.

In *Crawford v. Marion County Election Board*, 128 S. Ct. 1610 (2008), the U.S. Supreme Court sustained an Indiana voter photo identification law against a federal equal protection challenge because the court found that the state's interest in election modernization, prevention of voter fraud, and promoting public confidence in the integrity of the electoral process outweighed the limited burden upon voters' rights. In this state, the Wisconsin Constitution, article III, section 1, prescribes the qualifications for voting. The courts have held that election laws may implement and interpret these qualifications, but may not restrict eligibility. To be sustained, the courts must conclude that the requirements imposed under this draft simply constitute a reasonable method of verifying eligibility, as opposed to creating a new eligibility requirement. See *State ex rel. Barber v. Circuit Court*, 178 Wis. 468, 476 (1922).

5. It is possible that, if enacted, this draft may activate certain requirements under the National Voter Registration Act from which this state is currently exempt. Primarily, these requirements include voter registration simultaneously with motor vehicle driver's license applications and renewals, voter registration at any office that provides public assistance, voter registration at any office that primarily provides state-funded services to persons with disabilities, and voter registration at armed forces recruiting offices. This act exempts any state which, since May 20, 1993, has continuously permitted all voters in federal elections to "...register to vote at the polling place at the time of voting." 42 USC 1973gg-2 (b) (2). The Help America Vote Act also contains a provisional balloting procedure for all electors who vote at polling places in elections for federal office whenever their ballots are not accepted, but states that are exempt from compliance with the National Voter Registration Act under 42 USC 1973gg-2 (b) are not covered by this procedure. Because this draft will preclude some persons from registering and voting on election day if the persons have no acceptable ID and are unable to obtain them from a government office before the close of the polls, it could be interpreted to make these federal exemptions inapplicable. You may want to consider allowing these persons, only for the applicable election, to establish their identity by corroboration or to provide some type of statement certifying their identity and residence.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

This is a redraft of 2007 LRB-2059/2. You may wish to consult my drafter's note for that draft with regard to my general drafting approach. The most significant change in law related to this draft since 2007 LRB-2059/2 was prepared occurs in 2009 Wisconsin Act 103. Certain provisions of Act 103 remove the authority for Wisconsin law enforcement officers to seize driver's licenses. It may still be the practice in other states, however, to seize driver's licenses for certain traffic offenses in those states. For this reason, I have not modified created ss. 6.79 (7), 6.87 (4) (b) 4., and 6.965 in this

draft, although the justification for these provisions is weaker after Act 103 than it was in 2007.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.wisconsin.gov