

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0964/1dn  
JTK&ARG:kjf:jf

December 3, 2004

Representative Stone:

1. The enactment of 2003 Wisconsin Act 265, which implemented the federal Help America Vote Act of 2002 in this state, required major changes to be made in 2003 AB-111 in order to engraft it onto current law. Act 265 requires identification, which is defined differently than in 2003 AB-111, to be provided only by electors who register by mail and have never voted in a federal election in *the municipality where they are voting*. [See the definition of "identification" in s. 5.02 (6m), stats., which mirrors federal law.] On January 1, 2006, this requirement changes so that it will apply only to electors who register by mail and have never voted in a federal election in *this state*. Some portions of Act 265 are double drafted (amended twice with different effective dates) to reflect this change. As a result, this draft is also double drafted to engraft the changes that it makes twice on both versions of the law. If it would be acceptable to delay implementation of this draft until at least January 1, 2006, some of this double drafting could be eliminated, and the draft would be shortened and simplified somewhat.

2. Similarly, those parts of the statutes affected by Act 265 that establish a statewide voter registration system initially apply at the 2006 spring primary election. Whenever this draft amends those parts of the statutes, double drafting is used to effect the change to both versions of the law (one before Act 265 applies and the other afterwards). If this draft were to initially apply no sooner than the 2006 spring primary election, this complication could be eliminated.

3. Act 265 creates a provisional balloting system (s. 6.97, stats.) that enables a voter who registered by mail and has never voted in a federal election in the municipality where he or she is voting (after January 1, 2006 in this state) and who cannot provide one of the forms of identification that is acceptable under federal law to vote a provisional ballot. The municipal clerk or board of election commissioners determines whether provisional ballots are valid by 4 p.m. on the day after election day. AB-111 similarly allowed provisional balloting for voters who registered by mail and have never voted in a federal election in this state if the voters cannot produce one of the forms of verifiable identification required by this draft on election day but are able to do so by 4 p.m. or the close of business on the day after the election. AB-111 placed the sole burden on the elector to correct any deficiency with his or her license or identification card and made the decision of the municipal clerk or board of election

commissioners not subject to appeal. Section 6.97, stats., which mirrors the federal law makes the municipal clerk or board of election commissioners responsible for determining an elector's eligibility to vote and that decision is subject to appeal. Although it would again be a substantive change, this draft could be simplified by using the same provisional balloting procedure that applies under current law in all cases or by extending it to apply to all electors who, at any election, cannot provide one of the forms of verifiable identification required by this draft.

4. As discussed above, current law, in ss. 6.79 (2) and 6.88 (3) (a), stats., requires certain electors to provide identification as defined by federal law in order to be permitted to vote. The law requires election officials to verify that the name and address shown on the identification is the same as the identification shown on the registration list. Because some forms of identification, such as a Wisconsin operator's license or uniformed service identification card, do not necessarily contain a current voting address, this verification is sometimes impossible to make, and the elector is then prevented from voting until an address-verifiable form of identification can be produced. AB-111 similarly required that election officials verify that the name and address shown on the Wisconsin operator's license, Wisconsin ID or uniformed services ID are the same as shown on the registration list. Because these forms of identification do not necessarily contain a current address, it is not always possible to make this verification. *This draft, therefore, deletes the address verification requirement, but retains the requirement to verify the name and photograph of the elector.* Please let me know if you would like to see this issue treated differently.

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 the Department of Transportation (DOT) 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

The photograph on a driver's license may be up to eight years old. See s. 343.14 (3). There is also no requirement that the address appearing on the license be the person's current address. If a licensee moves, a licensee may notify DOT, which then enters the new address in its database, and elect not to obtain a new license document with the new address on it. See s. 343.22 (2) (b). This combination of factors could conceivably create confusion for poll workers.

There are certain security concerns inherent in issuing drivers' licenses, which have received some attention in the last few years in relation to anti-terrorism efforts. DOT has announced its recommendation to join the national driver license agreement (DLA), which is a cooperative effort among the states to, among other things, enhance security in relation to driver license and state identification card issuance. One principle of the DLA is that identity proof requirements must be the same for issuance of a state identification card as for issuance of a driver's license. It is unclear how the state's joinder of the DLA would affect the opportunity for certain unlicensed persons to obtain state identification cards from DOT for purposes of voting. You may wish to inquire of DOT on this issue.

Under existing law, a person may not obtain an identification card if the person has been issued a driver's license. See s. 343.50 (2). Under a variety of situations, a person may have a driver's license seized by a law enforcement officer or a court. For example, if a person is stopped on suspicion of OWI and submits to a preliminary breath test which indicates a positive result, or if the person refuses the test, the law enforcement officer must immediately seize the person's driver's license, even though no conviction has occurred. See s. 343.305 (7) (a) and (9) (a). For a litany of other traffic offenses, a court must seize the person's driver's license upon conviction. See, e.g., s. 343.28 (2). Depending upon the timing of such events, a person who is subject to such a stop or conviction shortly before an election will likely be unable to produce the requisite documentation to vote.

Under existing law, a person may obtain a driver's license without a photograph based upon the person's religious convictions. See s. 343.14 (3), stats., and s. Trans 102.03 (2) (b), Wis. Adm. Code. The attached draft requires, for voting purposes, a driver's license with a photograph or an identification card (or a uniformed service identification card). There is an exception in the draft allowing a DOT identification card to be issued without a photograph based upon religious conviction. However, because the draft does not contain a photograph exception for driver's licenses, and a person may not obtain an identification card if the person holds a driver's license, the attached draft may put a person in the position of having to choose between the driving privilege and the opportunity to vote.

Under existing law, a person who is not a resident may legally drive in Wisconsin if the person holds an out-of-state driver's license. There is a definition of "resident" in s. 343.01 (2) (g) for purposes of driver licensing. The definition of "resident" for voting purposes is not exactly the same. See s. 6.10. Any discrepancy in the definitions could impact the ability of certain persons, including college students, to vote in this state. Presently, holding an out-of-state driver's license does not necessarily preclude a person from voting in Wisconsin. The probable result of the bill would be to require a person to surrender the out-of-state driver's license and obtain a Wisconsin driver's license in order to vote. (DOT would likely not issue an identification card to the holder of an out-of-state driver's license. See s. 343.50 (2).)

As with 2003 AB-111, this bill provides no additional funding to cover the cost to DOT of issuing identification cards without a fee.

Aaron R. Gary  
Legislative Attorney  
Phone: (608) 261-6926  
E-mail: [aaron.gary@legis.state.wi.us](mailto:aaron.gary@legis.state.wi.us)