

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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Senator Leibham:

Under current law, the qualifications for obtaining a driver's license or a Wisconsin identification card under ss. 343.06, 343.14, 343.16, and, 343.50, stats., are not the same as the qualifications for voting under ss. 6.02 and 6.03, stats. It is possible for some persons who are ineligible to vote, for example, non-U.S. citizens, to obtain a driver's license. Some persons who cannot obtain a driver's license (for example, visually impaired persons) may be eligible to vote. In general, under s. 343.50 (2), stats., it is possible for a person who is a Wisconsin resident to obtain a Wisconsin ID card if the person does not have a driver's license issued by Wisconsin or another state. The standard for determining residency under the election laws (s. 6.10, stats.) is different than the standard for determining residency for Wisconsin ID purposes (s. 343.01 (2) (g), stats.). In general, a person may be considered a Wisconsin resident for voting purposes if the person has been present here for at least ten days and has not established a residence elsewhere. A person is a resident for Wisconsin ID purposes if the person's "one home and customary and principal residence, to which the person has the intention of returning whenever he or she is absent," is in Wisconsin. As a result, it is possible for a person who has only a driver's license issued by another state to vote in this state, and such a person may not always have an address from which he or she could vote in that other state (because someone else lives at the address shown on his or her license or the person uses a Wisconsin address for other purposes). Because under this draft a person who does not have a uniformed service identification card must have a Wisconsin driver's license or Wisconsin identification card in order to vote, a person who has only a driver's license issued by another state may no longer vote in this state under this draft (unless one of the exceptions to the ID requirement

applies). The person may or may not have an option to vote elsewhere. If you wish to discuss these issues further, please let me know.

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

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

1. Because this draft, in proposed s. 343.505 (1) (b), potentially permits any person to obtain an identification certificate, the draft will enable some individuals who do not qualify as electors of this state to obtain a certificate. To dovetail the requirements for obtaining a certificate with the requirements for voting would require changing the draft, as well as cross training of DOT personnel to properly determine voting qualifications or involvement of GAB staff or other election officials in the process for issuance of identification certificates. 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 (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.
3. Voter photo ID laws have recently been enacted in at least eight 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).

4. 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 federal 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. To address this issue, 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