



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 2

TO: MEMBERS OF THE SPECIAL COMMITTEE ON STATE-TRIBAL RELATIONS

FROM: Jessica Ozalp, Staff Attorney

RE: Inclusion of Tribal Identification Cards in Statutes Requiring Proof of Identity

DATE: November 22, 2016

BACKGROUND

In 2014, the Special Committee on State-Tribal Relations recommended that the Joint Legislative Council introduce WLC: 0046/1, a bill draft providing that an identification card issued by an American Indian tribe or band (“tribal identification card”) may be accepted as personal identification under any state law requiring an individual to present personal identification if it includes the following information:

- The full name, address, and birth date of the card holder.
- A photograph of the card holder.
- Any other information required by the law requiring identification.

The bill draft also specified that if a person refuses to accept a tribal identification card, the cardholder may bring an action for mandamus asking a court to order the acceptance of the tribal identification card. Under the bill draft, a prevailing plaintiff in this type of action would also be entitled to his or her attorney fees and costs.

The Joint Legislative Council introduced this bill draft as 2015 Assembly Bill 130 (AB 130). On May 27, 2015, the Assembly Committee on State Affairs and Government Operations held a public hearing on AB 130. As a result of concerns raised during and after the public hearing, AB 130 did not advance beyond the public hearing.

Very generally, the concerns raised about AB 130 related to (1) law enforcement’s ability to confirm the validity of tribal identification cards under various circumstances; (2) the

enforcement mechanism authorizing a tribal identification card holder to take someone to court to compel acceptance of the tribal identification card; and (3) ambiguity about the purposes for which a tribal identification card may be presented as proof of personal identification. With respect to the last concern, the statutes requiring proof of identity generally list specific forms of identification as acceptable forms of identification. AB 130, however, did not specifically include a tribal identification card within these lists.

DISCUSSION

During the committee's August 1, 2016 meeting, committee members requested that the committee again study expanding the instances in which a tribal identification card may be used when statutes require that a person provide proof of identity. To address the concern noted above about ambiguity in AB 130, committee staff advised the committee to include a specific reference to tribal identification in each statutory provision in which the committee would like a tribal identification card to be accepted as proof of identity.

Representative Jeff Mursau, chair of the committee, asked committee members to provide him with information about purposes for which committee members would like tribal identification cards to be accepted as proof of identity. He then directed staff to prepare a Memo describing certain identification requirements listed within AB 130 as examples of laws requiring proof of identity. These examples were:

1. Proof of residency for the purpose of voting. [s. 6.34 (3) (a), Stats.]
2. Proof of age for purchase of alcohol beverages. [s. 125.085 (1), Stats.]
3. Proof of identity for sales to scrap dealers, antique dealers, recyclers, secondhand article or jewelry dealers, and pawn brokers. [ss. 134.405 (3), 134.695 (2), and 134.71 (8), Stats.]
4. Proof of identity for a license to carry a concealed weapon. [s. 175.60, Stats.]
5. Proof of identity for purchase of Schedule II and III controlled substances. [s. 450.11 (1b), Stats.]

Proof of Residency for the Purpose of Voting

Election law requires voters to provide two forms of documentation: (1) proof of residence, which is used to establish residency when an individual *registers to vote*; and (2) voter ID, which is used to establish identity when an individual *votes*. Below are descriptions of both forms of documentation.

Proof of Residence

The documents that can be used as proof of residence when an individual registers to vote are contained in s. 6.34 (3), Stats. This provision does not include tribal identification cards among the listed forms of documentation accepted as proof of residence.

Any document used as proof of residence under s. 6.34 (3), Stats., must also be valid on the date of application for voter registration and contain a full name and residential address.

Voter Identification

The documents that can be used as voter ID (when an individual votes) are contained in s. 5.02 (6m), Stats. Among other documents, s. 5.02 (6m) (e), Stats., provides that "identification" includes "an identification card issued by a federally recognized Indian tribe in this state."

Proof of Age for Purchasing Alcohol Beverages

Under current law, a person may be required to present an official identification card as proof he or she has attained the legal drinking age before alcohol beverages may be provided to that person, or the person is allowed to enter premises where alcohol beverages are consumed or sold. Section 125.085, Stats., defines "official identification card" as any of the following:

- A valid operator's (driver's) license issued under ch. 343 that contains the photograph of the holder.
- An identification card issued (by the Department of Motor Vehicles) under s. 343.50, Stats.
- An identification card issued under s. 125.08, 1987 Stats., the former law on proof of legal drinking age.
- A valid military identification card issued to a member of the U.S. armed forces, or forces incorporated as part of the U.S. armed forces, that contains the person's photograph and date of birth.

In addition, there are a number of offenses related to making, altering, duplicating, or possessing an official identification card for various purposes related to underage drinking. For example, it is illegal to "make, alter, or duplicate an official identification card, provide an official identification card to an underage person or knowingly provide other documentation to an underage person purporting to show that the underage person has attained the legal drinking age." [s. 125.085 (3), Stats.] It is illegal for a person to "possess an official identification card or other documentation used for proof of age with the intent of providing it to an underage person." [s. 125.085 (3), Stats.] It is also illegal for any underage person to do any of the following:

- Intentionally carry an official identification card not legally issued to him or her, an official identification card obtained under false pretenses or an official identification card which has been altered or duplicated to convey false information.
- Make, alter, or duplicate an official identification card purporting to show that he or she has attained the legal drinking age.
- Present false information to an issuing officer in applying for an official identification card.
- Intentionally carry an official identification card or other documentation showing that the person has attained the legal drinking age, with knowledge that the official identification card or documentation is false.

Department of Revenue (DOR) staff consulted for purposes of preparing this Memo stated that any identification card authorized as proof of identification for purposes of purchasing alcohol beverages should include, at minimum, all of the following:

- The full name of the card holder.
- The address of the card holder.
- The birth date of the card holder.
- A photograph of the card holder.

Proof of Identity for Certain Sales

The statutes require proof of identity for sales to scrap dealers, antique dealers, recyclers, secondhand article or jewelry dealers, and pawn brokers. These statutes are not enforced by a state agency; instead local law enforcement may investigate violations, which may be prosecuted by district attorneys in the counties where violations occur. Certain provisions in the “Miscellaneous Trade Regulations” chapter [ch. 134, Stats.] specify three different definitions of acceptable identification, depending on the type of sale. These are outlined below.

Proof of Identity to Sell Nonferrous Scrap, Metal Articles, or Proprietary Articles to a Scrap Dealer

First, an individual must provide identification in order to sell nonferrous scrap, metal articles, or proprietary articles to a scrap dealer. For purposes of such a sale, acceptable identification is either the seller’s motor vehicle operator’s license or other government-issued, current photographic identification that includes the seller’s full name, current address, date of birth, and recognized identification number. The term “recognized identification number” is not further defined. [s. 134.405 (3) 1., Stats.]

Proof of Identity to Sell Home Furnishings to an Antique Dealer or Recycler

Second, an individual must provide identification in order to sell used home furnishings to an antique dealer or recycler. For purposes of such a sale, the individual must provide a signature, a name and address, and one of the following identification numbers:

1. The person’s motor vehicle operator’s license number.
2. The person’s state identification card number.
3. The person’s military identification card number.
4. The person’s U.S. passport number.
5. The person’s alien registration card number.

[s. 134.695 (2) (b), Stats.]

Proof of Identity to Sell Secondhand Articles or Jewelry to a Pawnbroker or Secondhand Dealer

Third, an individual must provide identification in order to sell secondhand articles or jewelry to a pawnbroker or secondhand dealer. For purposes of such a sale, acceptable identification is one of the following:

1. A county identification card.
2. A state identification card.
3. A valid Wisconsin motor vehicle operator's license.
4. A valid motor vehicle operator's license, containing a photograph, issued by another state.
5. A military identification card.
6. A valid passport.
7. An alien registration card.
8. A senior citizen's identification card containing a photograph.
9. Any identification document issued by a state or federal government, with or without a photograph, if the pawnbroker or secondhand dealer takes a fingerprint.

Proof of Identity for a License to Carry a Concealed Weapon

Under state law, an individual must submit one of the following state identification card numbers in order to apply for a license to carry a concealed weapon:

1. The unique identifying driver number assigned to a Wisconsin resident by the Department of Transportation under s. 343.17 (3) (a) 4., Stats., or, if the Wisconsin resident has no driver number, the number assigned to the Wisconsin resident on an identification card issued under s. 343.50, Stats.
2. The unique identifying driver number assigned to a military resident by the military resident's state or, if the military resident has no driver number, the number assigned to the military resident on an identification card issued by the military resident's state.

[s. 175.60, Stats.]

The law requires that each applicant for a license to carry a concealed weapon undergo a background check for criminal history through the Crime Information Bureau (CIB) of the Wisconsin Department of Justice. The background check also includes a search in the National Instant Criminal Background Check System to determine whether the applicant is prohibited from possessing a firearm. [s. 175.60 (9g) (a) 2., Stats.] Generally, CIB uses the required identification number as a part of this background check.

Unless an exception applies, a licensee must have with him or her, during all times he or she is carrying a concealed weapon, his or her license document, photographic identification card, and, if the licensee is a military resident, his or her military license. For this purpose, photographic identification is defined as one of the following:

- An operator's (driver's) license issued under ch. 343, Stats.
- An identification card issued (by the Department of Motor Vehicles) under s. 343.50, Stats.
- A license or card issued by a state other than Wisconsin that is substantially equivalent to a Wisconsin driver's license or identification card issued by the Department of Motor Vehicles.

[s. 175.60 (1) (h), Stats.]

Proof of Identity for Purchase of Controlled Substances

Under state law, a pharmacist or other person dispensing or delivering a Schedule II or Schedule III controlled substance may not dispense or deliver the substance without an identification card belonging to the person to whom the drug is being dispensed or delivered. "Identification card" is defined for this purpose as any of the following:

1. A Wisconsin motor vehicle operator's license or a comparable license issued by another state.
2. A state identification card issued under s. 343.50, Stats., or under a comparable law of another state.
3. A U.S. military identification card.
4. A U.S. or foreign passport.

[s. 450.11 (1b) (a), Stats.]

Legal counsel for the Department of Safety and Professional Services (DSPS) consulted for purposes of preparing this Memo stated that any identification authorized as proof of identification for purposes of purchasing controlled substances should include the same basic information as the above-listed forms of identification.

JEO:jal