

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1360

SPONSOR: Commerce, Economic Opportunities, and Consumer Services Committee and
Senator Garcia

SUBJECT: Drivers' Licenses

DATE: April 1, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Maclure	Maclure	CM	Favorable/CS
2.	_____	_____	GO	_____
3.	_____	_____	ATD	_____
4.	_____	_____	AP	_____
5.	_____	_____	RC	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute authorizes the Department of Highway Safety and Motor Vehicles to issue a two-year driving permit to a foreign national in this state who applies for a driver's license but cannot satisfy the proof-of-identification requirements of the driver's license law, such as a green card, a U.S.-issued employment authorization card, or proof of nonimmigrant classification. The committee substitute authorizes the applicant to submit instead an identification card from the embassy or consulate of his or her country of citizenship, provided the country is one with which the United States maintains diplomatic relations and is not on a list of terrorist countries. The committee substitute also creates comparable authority for the department to issue a two-year driving permit to a person who enters the United States under the Cuban Adjustment Act. For both applicants, the committee substitute prescribes information requirements and conditions, based on criminal convictions, under which issuance of the permit shall be denied.

The committee substitute also establishes a process under which a foreign national who visits the state frequently, but who is not an immigrant, may obtain a driver's license, valid for two years, if he or she can prove ownership or lease of real property or ownership of an established business, as well as prove ownership or lease and registration of a motor vehicle in this state.

This committee substitute creates the following sections of the Florida Statutes: 322.071, 322.072, and 322.073.

II. Present Situation:

Driver's License Application

An application for a driver's license must be made to the Department of Highway Safety and Motor Vehicles in a format designated by the department. The application must be sworn or affirmed by the applicant as containing truthful statements.¹ Section 322.08, F.S., prescribes the information that must be provided as part of the application, which includes:

- The applicant's full name, gender, social security card number, county of residence and mailing address, country of birth, and a brief description.
- Proof of date of birth satisfactory to the department.
- Proof of identity satisfactory to the department.
- Whether the applicant has previously been licensed to drive and whether such driving privilege has ever been disqualified, revoked, or suspended, or whether an application has ever been refused.

Each application may include fingerprints and other unique biometric means of identity.

The proof of identity satisfactory to the department must include one of the following documents issued to the applicant:

- A driver's license record or identification card record from another jurisdiction that required the applicant to submit a document for identification which is substantially similar to the documents required under Florida law;
- A certified copy of a United States birth certificate;
- A valid United States passport;
- An alien registration receipt card (green card);
- An employment authorization card issued by the United States Department of Justice; or
- Proof of nonimmigrant classification provided by the United States Department of Justice.²

It is unlawful for a person to use a false or fictitious name in any application for a driver's license or knowingly to make a false statement, knowingly conceal a material fact, or otherwise commit fraud in any application for a driver's license. It is also unlawful to knowingly possess any blank, forged, stolen, fictitious, counterfeit, or unlawfully issued driver's license, unless the possession is authorized by the department.³ Generally a violation of these provisions is a felony of the third degree.

Under current law, the department may only issue driver's licenses to certain non-citizens for a limited period of time. Typically a driver's license is issued for a period of six years initially, and then is renewed for six years after expiration, as long as the licensee has a clean driving record for the three years preceding renewal. If the licensee has points assessed against the license

¹ Section 322.08(1), F.S.

² Section 322.08(2)(c)1.-6., F.S.

³ Section 322.212(1)(a) and (5)(a), F.S.

within that three-year period, the renewal is only effective for four years. However, if a licensee proves his or her identity in an application for the license by means of an employment authorization card issued by the United States Department of Justice or by other proof of non-immigrant classification, then the driver's license expires four years after the date it is issued or upon the expiration date of the documents used to prove identity, whichever occurs first.⁴

Foreign Consular Identification Cards

The use of identification cards issued by foreign governments to their citizens living in the United States has been a topic of recent public policy discussion and debate. In particular, focus has centered on Mexico's promotion of its *Matricula Consular* as a way for Mexicans in this country to satisfy identification requirements for services such as opening an account with a financial institution. One of the arguments raised against use of the cards is that they facilitate illegal immigration and may be subject to tampering; one of the arguments raised in support of use of the cards is that they provide these individuals with access to necessary services in commerce and government. Although the practice by foreign governments of issuing identification cards to their citizens living in other countries is long-established, the practice has drawn increasing attention in the wake of national security concerns following the terrorist attacks of September 11, 2001. (For an overview of various issues related to the use of consular identification cards, see the materials from a June 2003 hearing before the Subcommittee on Immigration, Border Security, and Claims of the Committee on Judiciary of the U.S. House of Representatives.⁵)

With respect to use of consular cards for the purposes of obtaining driving privileges, the National Conference of State Legislatures in October 2003 reported that:

Consular identification refers to an official identity card issued by a foreign national government to its citizens who are living in the United States and other countries abroad. Some U.S. states officially recognize consular identification. In 2003 at least 10 states—Arizona, California, Colorado, Georgia, Hawaii, Louisiana, Nevada, New York, Tennessee, and Texas—introduced legislation regarding the consular identification Legislation in California, Hawaii and New York sought to broaden acceptance of the consular identification cards as valid identification documents, while legislation in Tennessee sought to restrict their use. In June 2003, Tennessee enacted HB 1705, which expressly prohibits the use of the *matricula consular*—consular identification from Mexico—as an identification document.⁶

The NCSL report also outlined issues related to providing driving privileges to an undocumented immigrant, which is “someone who enters or lives in the United States without official authorization, either by entering illegally or by violating the terms of his or her admission.” The report noted:

⁴ Section 322.18(2), F.S.

⁵ United States House of Representatives, hearing before the Subcommittee on Immigration, Border Security, and Claims of the Committee on Judiciary, June 19 and 26, 2003, *available at* <http://www.house.gov/judiciary/87813.PDF>.

⁶ Catherine A. Chan and Reed F. Morris, National Conference of State Legislatures, *Transportation Review: Driver's Licenses and Identification Cards*, 3, October 2003.

Supporters of restricting the license to only those lawfully present under U.S. law argue that driving is a privilege, and granting a license to undocumented immigrants encourages the influx of illegal immigrants through U.S. borders. In addition, the September 11 terrorist attacks also called attention to the security weaknesses of driver's licenses. Thus, the issue of undocumented immigrants and licensing is also related to states' objectives of preventing terrorists from obtaining false identification.

Opponents of restricting license eligibility argue that by not issuing undocumented immigrants driver's licenses, those individuals are unable to obtain motor vehicle insurance or receive proper driver education and examination. Traffic safety concerns arise because, with or without a license, many are likely to continue driving. Opponents also question the effectiveness of resolving issues of lawful presence at the licensing office when great concern exists regarding the ability of motor vehicle agencies to identify and include the vast number of INS documents immigrants may present.⁷

Cuban Adjustment Act

The Cuban Adjustment Act (CAA) provides a procedure under which Cuban nationals or citizens, and their accompanying spouses and children, may obtain a status in the United States as lawful permanent residents. The act authorizes the U.S. Attorney General to grant permanent residence to Cuban nationals or citizens seeking adjustment of status if they have been present in the United States for at least one year after admission or parole and are admissible as immigrants. These applications for adjustment of status may be approved notwithstanding the fact that the person may not meet the ordinary requirements for adjustment of status under the Immigration and Nationality Act. Since the caps on immigration do not apply to adjustments under the CAA, it is not necessary for the alien to be the beneficiary of a family-based or employment-based immigrant visa petition.⁸

III. Effect of Proposed Changes:

This committee substitute establishes procedures under which the Department of Highway Safety and Motor Vehicles may issue driving permits to foreign nationals in this state who are unable to meet the proof-of-identification requirements of the driver's license law and to foreign nationals who have entered the United States under the Cuban Adjustment Act. The committee substitute also authorizes the department to issue a driver's license to a foreign national who is a regular visitor to this state but who has not immigrated to the United States.

Permits for Foreign Nationals Who Cannot Satisfy Proof-of-Identification

Under the committee substitute, a foreign national who applies for a driver's license but cannot satisfy the proof-of-identity requirements under s. 322.08(2)(c), F.S., may apply to the department for a two-year driving permit. (These proof-of-identity requirements include, among others, a green card, a U.S.-issued employment authorization card, or proof of nonimmigrant

⁷ *Id* at 6.

⁸ U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *Cuban Nationals or Citizens Seeking Lawful Permanent Resident Status: Overview*, available at <http://uscis.gov/graphics/services/residency/CAA.htm> (last modified Sept. 9, 2003).

classification.) The applicant, however, must be from a country that maintains diplomatic relations with the United States and is not a threat to the United States or is not on a list of terrorist countries maintained by the United States. The committee substitute provides that the applicant may present an identification card issued by the embassy or consulate of his or her country, or may present another form of official identification issued by the country's government.

The applicant must:

- Present a current identification card issued by the embassy or consulate of his or her home country, or present an alternative form of identification such as a passport, national identity card, or other official proof of identification issued by the country of citizenship, as prescribed by the department.
- Present a second form of identification, subject to approval by the department, such as an employer identification card or taxpayer identification number.
- Submit to being fingerprinted.
- Submit proof of an established presence in this state for at least six months during the five years preceding the date of application.
- Affirm that he or she has not been convicted of a crime that would constitute a felony in this state.
- Establish proof of ownership or lease of a motor vehicle or document his or her need to operate a motor vehicle.

The department must:

- Receive directly from the embassy or consulate the following information about the applicant:
 - Documentation on whether the applicant has been convicted of a crime that would constitute a felony in this state;
 - A certified copy of the applicant's driving record in his or her country of citizenship, if available.
 - Certification that the form of identification presented by the applicant is legitimate.
 - Certification that the country has established a process to ensure that a person may not obtain more than one identity.
- Verify through federal agencies that the applicant is not subject to a deportation order and is not classified as a security risk to the United States.
- Conduct a criminal background check on the applicant using his or her fingerprints. The committee substitute specifies that a driving permit may not be issued to an applicant who has been convicted of a crime that would be classified as a felony in this state.

A driving permit issued under the committee substitute is valid for two years, valid in Florida only, and must have a background that distinguishes it from an ordinary driver's license. The committee substitute also establishes a process for renewing the permit. The permit remains property of the state and may be seized by a law enforcement officer who has a reasonable belief that a person possesses or is using the permit in violation of the law. The fee for the driving

permit is to be established by the department, taking into consideration the costs associated with the background, immigration, and security checks required under the committee substitute.

Permits for Foreign Nationals Under Cuban Adjustment Act

The committee substitute also establishes a comparable process under which foreign nationals from Cuba may obtain a driving permit. The provisions apply to individuals who enter the United States under the Cuban Adjustment Act and who may not be deported because the United States does not maintain diplomatic relations with Cuba.

The applicant must:

- Present a form of identification that is acceptable to the department.
- Submit to being fingerprinted.
- Affirm that he or she has not been convicted of a violent felony, terrorism, or money laundering, or conspiracy to commit any of these crimes; is not a habitual offender of illegal drug laws; and has not been designated as a terrorist or leader of an illegal drug enterprise.
- Establish proof of ownership or lease of a motor vehicle or document his or her need to operate a motor vehicle.

The department must:

- Verify through federal and state agencies that the applicant is not classified as a security risk to the United States.
- Verify through the federal government that the applicant is not classified as a terrorist or leader of an illegal drug enterprise.
- Verify the identity of the applicant using the fingerprints submitted. The committee substitute does not specify by what means the department is to verify the identify using fingerprint data.
- Conduct a criminal background check on the applicant using his or her fingerprints. The committee substitute specifies that a driving permit may not be issued to an applicant who has been convicted of a violent felony, terrorism, or money laundering, or conspiracy to commit any of these crimes, by any state or federal court; is a habitual offender of laws relating to illegal drugs; or has been designated as a terrorist or the leader of an illegal drug enterprise by the United States Department of Justice.

A driving permit issued under the committee substitute is valid for two years, valid in Florida only, and must have a background that distinguishes it from an ordinary driver's license. The committee substitute also establishes a process for renewing the permit. The permit remains property of the state and may be seized by a law enforcement officer who has a reasonable belief that a person possesses or is using the permit in violation of the law. The fee for the driving permit is to be established by the department, taking into consideration the costs associated with the background and security checks required under the committee substitute.

Licensing of Foreign Nationals Who Visit This State

The committee substitute creates a process for the department to issue a two-year driver's license to a foreign national who visits this state "frequently" but has not immigrated to the United States. The committee substitute does not define "frequently." The applicant must establish:

- Proof of ownership or rental of real property during the time the applicant is in this state, or proof of ownership of an established business in this state for five years; and
- Proof of ownership or lease of, and registration of, a motor vehicle in this state.

Effective Date

The committee substitute provides an October 1, 2004, effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The committee substitute authorizes the Department of Highway Safety and Motor Vehicles to adopt fees for the issuance and renewal of driving permits authorized for certain foreign nationals.

B. Private Sector Impact:

To the extent that the provisions of this committee substitute enable foreign nationals to obtain lawful driving privileges in this state, the provisions may facilitate the participation of these individuals in the flow of commerce in this state.

C. Government Sector Impact:

The Department of Highway Safety and Motor Vehicles will experience costs associated with processing applications for driving permits or driver's licenses under this legislation. In addition, the department will experience costs associated with maintaining fingerprint data on driving permit applicants, as required by this committee substitute. The legislation does authorize the department to factor in some of the costs related to

processing applications (e.g., costs for criminal background checks) into the fees charged for the issuance of a driving permit.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
