

093838828

SENATE BILL NO. 1046

Offered January 14, 2009

Prefiled January 13, 2009

A BILL to amend and reenact §§ 46.2-344, 46.2-345, and 63.2-503.1 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 3 of Title 46.2 an article numbered 3.1, consisting of sections numbered 46.2-322.1 and 46.2-322.2, and by adding sections numbered 46.2-323.2 and 46.2-342.1; and to repeal § 46.2-328.1 of the Code of Virginia, relating to implementation of the federal REAL ID Act.

Patron—Miller, Y.B.

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-344, 46.2-345, and 63.2-503.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 3 of Title 46.2 an article numbered 3.1, consisting of sections numbered 46.2-322.1 and 46.2-322.2, and by adding sections numbered 46.2-323.2 and 46.2-342.1 as follows:

*Article 3.1.**Licenses and Identity Documents to Conform to federal REAL ID Act.**§ 46.2-322.1. Implementation of federal REAL ID Act provisions.*

Effective January 1, 2010, all driver's licenses, permits, and special identification cards issued by the Department pursuant to this chapter shall comply with the minimum standards of the federal REAL ID Act (49 U.S.C. 30301 Note, as amended) and the federal regulations (6 C.F.R. Part 37, as amended) promulgated thereunder, except as otherwise provided in this chapter.

§ 46.2-322.2. Requirements for applicants for licenses and special identification cards under federal REAL ID Act provisions.

A. Notwithstanding the provisions of §§ 46.2-323, 46.2-330, 46.2-334, 46.2-341.12, 46.2-343, and 46.2-345, and any other provision of this chapter, effective January 1, 2010, every applicant for a driver's license or special identification card, or for renewal thereof, or for the issuance of a duplicate thereof, or for the reissuance of a license or special identification card, shall be required to apply in person for such issuance, renewal, reissuance, or duplicate driver's license or special identification card and shall be required to be photographed and to sign his usual signature as required by the Department and to present documents as proof of his (i) identity, (ii) date of birth, (iii) lawful status in the United States, (iv) principal residence address, and (v) social security number or, if a foreign national without a social security number, a non-work authorized status in the United States.

B. The requirements of subsection A may be waived by the Commissioner if the records of the Department show that the applicant has previously complied with all such requirements, subsequent to January 1, 2010, and all of the documents presented to the Department at the previous visit were fully verified by the Department as required by the federal REAL ID Act, and copies of all such source documents were retained by the Department as required by the federal REAL ID Act, and the applicant provides proof that he is the same person who previously complied with such requirements.

C. Notwithstanding any other provision of law, on and after January 1, 2010, for every application for a driver's license or special identification card, the Department shall terminate on its record any driver's license, commercial driver's license, commercial driver's license instruction permit, learner's permit, motorcycle learner's permit, or identification card issued by another state and held by the applicant, as a condition of issuance of such driver's license or special identification card. The Department shall terminate on its record any driver's license, learner's permit, commercial driver's license, commercial driver's license instruction permit, or special identification card issued by the Department and held by the applicant.

D. For the purposes of this section, the term "driver's license" or "license" includes commercial driver's licenses, temporary driver's licenses, and learner's permits other than motorcycle learner's permits issued by the Department.

§ 46.2-323.2. Minimum period of authorized stay required of applicants for licenses, permits, and special identification cards.

No license, permit, or special identification card shall be issued if an applicant's authorized stay in the United States is less than 30 days from the date of application.

§ 46.2-342.1. Photographs required for driver's licenses and special identification cards.

A. Notwithstanding the provisions of §§ 46.2-323, 46.2-341.12, 46.2-341.15, 46.2-342, and 46.2-345,

INTRODUCED

SB1046

59 *the Commissioner may substitute black and white digital photographs for the color photographs*
60 *otherwise required by those sections, provided that such substitution is not prohibited by federal law.*

61 *B. On and after January 1, 2010, any such photographs, whether color or black and white, shall*
62 *comply with and shall be stored and retained in accordance with the requirements of the federal REAL*
63 *ID Act.*

64 § 46.2-344. Temporary driver's permit.

65 A. The Department, upon determining, after an examination, that an applicant is mentally, physically,
66 and otherwise qualified to receive a license, may issue to him a temporary driver's permit entitling him,
67 while having the permit in his immediate possession, to drive a motor vehicle on the highways ~~for a~~
68 ~~period of ninety days, pending the issuance to such person of a driver's license. The temporary driver's~~
69 ~~permit shall be valid until receipt of the driver's license but in no case shall be valid for more than 90~~
70 ~~days from the date of issuance.~~

71 *B. Temporary permits issued under subsection A need not comply with the requirements of the*
72 *federal REAL ID Act, but they shall be readily identifiable as not REAL ID compliant.*

73 § 46.2-345. Issuance of special identification cards; fee; confidentiality; penalties.

74 A. On the application of any person who is a resident of the Commonwealth or the parent or legal
75 guardian of any such person who is under the age of 15, the Department shall issue a special
76 identification card to the person provided:

77 1. Application is made on a form prescribed by the Department and includes the applicant's full legal
78 name; year, month, and date of birth; sex; and residence address;

79 2. The applicant presents a birth certificate or other evidence acceptable to the Department of his
80 name and date of birth;

81 3. The Department is satisfied that the applicant needs an identification card or the applicant shows
82 he has a bona fide need for such a card; and

83 4. The applicant does not hold a driver's license, commercial driver's license, temporary driver's
84 permit, learner's permit, or motorcycle learner's permit.

85 Persons 70 years of age or older may exchange a valid Virginia driver's license for a special
86 identification card at no fee. Special identification cards subsequently issued to such persons shall be
87 subject to the regular fees for special identification cards.

88 B. The fee for the issuance of an original or renewal special identification card is \$5. The fee for the
89 issuance of a duplicate or reissue of a special identification card is \$5. Persons 21 years old or older
90 may be issued a scenic special identification card for an additional fee of \$5.

91 C. Every special identification card shall expire on the last day of the month of birth of the applicant
92 in years in which the applicant attains an age exactly divisible by five. At no time shall any special
93 identification card be issued for less than three nor more than seven years, except under the provisions
94 of subsection B A of ~~§ 46.2-328.1~~ § 46.2-322.2 and except that those cards issued to children under the
95 age of 15 shall expire on the child's sixteenth birthday, thereafter the special identification card may be
96 renewed on or before the last day of the month of birth of the applicant and shall be valid for five
97 years, expiring in the next year in which the applicant's age is exactly divisible by five, except under the
98 provisions of subsection B A of ~~§ 46.2-328.1~~ § 46.2-322.2.

99 D. A special identification card issued under this section may be similar in size, shape, and design to
100 a driver's license, and include a color photograph of its holder, but the card shall be readily
101 distinguishable from a driver's license and shall clearly state that it does not authorize the person to
102 whom it is issued to drive a motor vehicle.

103 E. Special identification cards, for persons at least 15 years old but less than 21 years old, shall be
104 immediately and readily distinguishable from those issued to persons 21 years old or older.
105 Distinguishing characteristics shall include unique design elements of the document and descriptors
106 within the photograph area to identify persons who are at least 15 years old but less than 21 years old.
107 These descriptors shall include the month, day, and year when the person will become 21 years old.

108 F. Special identification cards for persons under age 15 shall bear a full face photograph. The special
109 identification card issued to persons under age 15 shall be readily distinguishable from a driver's license
110 and from other special identification cards issued by the Department. Such cards shall clearly indicate
111 that it does not authorize the person to whom it is issued to drive a motor vehicle.

112 G. A valid Virginia driver's license may be surrendered for a special identification card without the
113 applicant's having to present proof of legal presence as required by ~~§ 46.2-328.1~~ subsection A of
114 § 46.2-322.2 if the Virginia driver's license is unexpired and it has not been revoked, suspended, or
115 cancelled. The special identification card shall be considered a reissue and the expiration date shall be
116 the last day of the month of the surrendered driver's license's month of expiration.

117 H. Any personal information, as identified in § 2.2-3801, which is retained by the Department from
118 an application for the issuance of a special identification card is confidential and shall not be divulged to
119 any person, association, corporation, or organization, public or private, except to the legal guardian or
120 the attorney of the applicant or to a person, association, corporation, or organization nominated in

writing by the applicant, his legal guardian, or his attorney. This subsection shall not prevent the Department from furnishing the application or any information thereon to any law-enforcement agency.

I. Any person who uses a false or fictitious name or gives a false or fictitious address in any application for an identification card or knowingly makes a false statement or conceals a material fact or otherwise commits a fraud in any such application shall be guilty of a Class 2 misdemeanor. However, where the name or address is given, or false statement is made, or fact is concealed, or fraud committed, with the intent to purchase a firearm or where the identification card is obtained for the purpose of committing any offense punishable as a felony, a violation of this section shall constitute a Class 4 felony.

J. The Department may promulgate regulations necessary for the effective implementation of the provisions of this section.

K. The Department shall utilize the various communications media throughout the Commonwealth to inform Virginia residents of the provisions of this section and to promote and encourage the public to take advantage of its provisions.

L. The Department shall electronically transmit application information to the Department of State Police, in a format approved by the State Police, for comparison with information contained in the Virginia Criminal Information Network and National Crime Information Center Convicted Sexual Offender Registry Files, at the time of issuance of a special identification card. Whenever it appears from the records of the State Police that a person has failed to comply with the duty to register or reregister pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, the State Police shall promptly investigate and, if there is probable cause to believe a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person made application for the special identification card.

§ 63.2-503.1. Legal presence required for public assistance; exceptions; proof of legal presence.

A. In addition to meeting the existing eligibility requirements of the benefits applied for, no person who is not a United States Citizen or legally present in the United States shall receive state or local public assistance pursuant to this subtitle, except for state or local public assistance that is mandated by Federal Law pursuant to 8 U.S.C. § 1621.

B. In addition to providing proof of other eligibility requirements, at the time of application for any state or local public benefit, an applicant who is 19 years of age or older shall provide affirmative proof that he is a U.S. citizen or is legally present in the United States. Such affirmative proof shall consist of documentary evidence as required pursuant to ~~§ 46.2-328.4~~ *subsection A of § 46.2-322.2* or a social security number as verified by the Social Security Administration. An applicant who is under the age of 19 years shall not be required to provide such affirmative proof; however, such person upon reaching the age of 19 years shall comply with the provisions of this section.

An applicant who cannot provide proof that he is a citizen or legally present at the time of application shall sign an affidavit under oath attesting that he is a U.S. citizen or legally present in the United States in order to receive temporary benefits as provided in this section. The affidavit shall be on or consistent with forms prepared by the Commissioner, and shall be subject to and include an explanation of the provisions of § 63.2-502 relating to penalties for knowingly providing false information on a public document. The agency shall report in writing to the appropriate attorney for the Commonwealth those who are determined to have falsely attested to lawful presence.

Once an applicant has provided the sworn affidavit required by this subsection, he shall be eligible to receive temporary benefits for either:

1. Ninety days or until such time that it is determined that he is not legally present in the United States, whichever is earlier, or

2. Indefinitely if the applicant provides a copy of a completed application for a birth certificate that has been filed and is pending and being actively pursued in accordance with § 32.1-259 or 32.1-260 or any substantially similar law of another state, the District of Columbia, or United States territory or commonwealth. Such extension shall terminate upon the applicant's receipt of a birth certificate or a determination that a birth certificate does not exist because the applicant is not a United States citizen.

C. The provisions of subsection B shall not apply to persons applying for benefits exempted by subsection A of this section and subsection A of § 32.1-325.03.

2. That the Commissioner of the Department of Motor Vehicles shall, prior to January 1, 2010, take those steps necessary to meet the federal deadlines for implementation of the federal REAL ID Act. These steps shall include but are not limited to:

a. Creating a security plan by January 1, 2010, that addresses physical security of facilities and materials used to manufacture licenses and special identification cards, security of personal information maintained by the Department of Motor Vehicles, document and physical security features for REAL ID-compliant licenses and special identification cards, training of employees in fraudulent document recognition and security awareness, and other areas of concern as set out in

182 6 C.F.R. § 37.41; and submitting that plan to the federal Department of Homeland Security by the
183 applicable federal deadline, as required by 6 C.F.R. § 37.55 in order to obtain a federal
184 determination that Virginia meets the requirements for compliance with the federal REAL ID Act;
185 b. Establishing the procedures and facilities required by 6 C.F.R. § 37.31 for retaining copies of
186 source documents and other materials presented to the Department of Motor Vehicles by
187 applicants for REAL ID-compliant licenses and special identification cards;
188 c. Instituting by January 1, 2010, a requirement for background checks for employees involved in
189 the issuance of REAL ID-compliant licenses and special identification cards, as required by 6
190 C.F.R. § 37.45; and
191 d. Negotiating and entering into contractual arrangements or agreements, and implementing a
192 training program to ensure that the Department of Motor Vehicles is capable of satisfying, by the
193 applicable federal deadline, (i) the requirements for document verification and for the physical
194 security features of REAL ID-compliant licenses and special identification cards, (ii) the technical
195 requirements for photographic images and signatures, and (iii) the requirements for machine
196 readability, all as required by the federal REAL ID Act and regulations.
197 3. That the provisions of this act amending §§ 46.2-345 and 63.2-503.1 shall become effective on
198 January 1, 2010.
199 4. That § 46.2-328.1 of the Code of Virginia is repealed effective January 1, 2010.
200 5. That Article 3.1 (§ 46.2-322.1 et seq.) of Chapter 3 of Title 46.2, subsection B of § 46.2-342.1,
201 and subsection B of § 46.2-344 of the Code of Virginia, and the second enactment of this act shall
202 expire in the event of the repeal of the federal REAL ID Act (49 U.S.C. 30301 Note, as amended).
203 In addition, the amendments to §§ 46.2-345 and 63.2-503.1 and the fourth enactment of this act
204 shall not become effective in the event of the repeal of the federal REAL ID Act.