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HOUSE JOINT RESOLUTION NO. 678

Offered January 12, 2011

Directing the Joint Legislative Audit and Review Commission to study the implementation of "legal presence" by the Virginia Department of Motor Vehicles. Report.

Patrons—Englin and Kory

Referred to Committee on Rules

WHEREAS, the U.S. Department of Homeland Security reported in "Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2009," that "between January 2008 and January 2009, the number of unauthorized immigrants living in the United States decreased seven percent from 11.6 million to 10.8 million"; and

WHEREAS, in September 2010, the Pew Hispanic Center reported that the "unauthorized immigrant population in Virginia declined by 65,000 to 240,000 people from 2008 to 2009"; however, despite the 21 percent decline, Virginia ranked eleventh among states in the number with the most unauthorized immigrants; and

WHEREAS, the U.S. Bureau of Citizenship and Immigration Services issues the Employment Authorization Document, Form I-766 (EAD) to certain immigrants to verify their eligibility to work in the United States, including individuals temporarily authorized to work in the country and those awaiting deportation; and

WHEREAS, Virginia law is unambiguous in requiring U.S. citizens and foreign-born persons to document legal presence as a prerequisite to obtain a driver's license or identification card; and

WHEREAS, recent tragic events have fueled growing concerns about the EAD's reliability as proof of legal presence, have increased the call to protect the integrity of the Virginia driver's license, and have resulted in the Governor's suspension of the federally issued EAD in September 2010 as proof of legal presence to obtain a driver's license or identification card; and

WHEREAS, although the Department of Motor Vehicles continues to accept 21 other documents as proof of legal presence, of which 20 are federally issued, many persons have expressed concern that the EAD frequently is the only document that legal immigrants may possess to verify their legal presence in the country to obtain a driver's license and for other valid purposes; and

WHEREAS, for some Virginians who are legal residents of the United States, such as elderly persons for whom birth certificates were not issued, elderly veterans who do not have military identification, citizens without passports, and other persons who do not have access to original documents required for proof of legal presence, providing proof of legal presence can be problematic when applying for a driver's license or identification card; and

WHEREAS, it is important and necessary to recognize and address the problems encountered by legal residents of Virginia in navigating the new legal presence law and to provide a speedy resolution to their dilemma; and

WHEREAS, ensuring the nation's security and the protection of its citizens is a vital and essential function of government, and administering the legal presence law consistently among customers who frequent local offices of the Department of Motor Vehicles would help to prevent the issuance of driver's licenses and identification cards to unauthorized immigrants; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Joint Legislative Audit and Review Commission be directed to study the implementation of "legal presence" by the Virginia Department of Motor Vehicles.

In conducting its study, the Joint Legislative Audit and Review Commission shall (i) review federal and state laws requiring proof of legal presence and the application of the laws by the Department of Motor Vehicles in issuing driver's licenses and identification cards; (ii) ascertain the number of driver's licenses and identification cards issued to legal residents and unauthorized immigrants in Virginia each year; (iii) review the procedures used by the Department of Motor Vehicles personnel to implement and document proof of legal presence and the assistance provided to Virginians who are legal residents of the United States but have difficulty satisfying the proof of legal presence requirement; (iv) evaluate the advantages and disadvantages of the proof of legal presence law in protecting and promoting the welfare of citizens; (v) determine the impact of the law on legal residents of the Commonwealth in obtaining driver's licenses and identification cards; (vi) identify gaps and obstacles in the system relative to the proof of legal presence requirement, including approved documents to verify legal presence; (vii) ascertain the advantages and disadvantages of reinstating acceptance of the Employment Authorization Document (Form I-766) as proof of legal presence to obtain a Virginia driver's license or identification

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59 card; (viii) identify the types of documents accepted by the Department of Motor Vehicles from legal
60 residents and foreign nationals whose only form of identification to prove legal presence in the United
61 States is the EAD; (ix) identify, if any, documents other than the EAD which are accepted by the
62 Department of Motor Vehicles to verify proof of legal presence of persons who hold or are protected
63 under the following types of legal presence status: temporary protected status, withholding of removal
64 status, political asylum, labor certification, employment-based immigrant visas, visas covered by the
65 Violence Against Women Act (VAWA), T-visas, and U-visas; (x) evaluate the direct and indirect and
66 personnel costs of implementing Department of Motor Vehicles' policy to suspend the use of the EAD
67 as proof of legal presence; (xi) conduct a cost-benefit analysis of implementing policy to suspend the
68 use of the EAD as proof of legal presence; (xii) provide a detailed count and status of the number of
69 driver's licenses and identification cards of applicants required by the Department of Motor Vehicles'
70 elevated review process to document proof of legal presence, including the number of applicants who
71 were accepted, denied, and are waiting review; the length of time needed to conduct an elevated review;
72 and the number applicants who have been affected since the suspension of the use of the EAD as proof
73 of legal presence; and (xiii) propose comprehensive recommendations to facilitate consistency in
74 applying the proof of legal presence law, to relieve legal residents of undue burdens in documenting
75 legal presence, and to minimize the issuance of driver's licenses and identification cards to unauthorized
76 immigrants in the Commonwealth.

77 Technical assistance shall be provided to the Joint Legislative Audit and Review Commission by the
78 Department of Motor Vehicles. All agencies of the Commonwealth shall provide assistance to the Joint
79 Legislative Audit and Review Commission for this study, upon request.

80 The Joint Legislative Audit and Review Commission shall complete its meetings by November 30,
81 2011, and the chairman shall submit to the Division of Legislative Automated Systems an executive
82 summary of its findings and recommendations no later than the first day of the 2012 Regular Session of
83 the General Assembly. The executive summary shall state whether the Joint Legislative Audit and
84 Review Commission intends to submit to the General Assembly and the Governor a report of its
85 findings and recommendations for publication as a House or Senate document. The executive summary
86 and report shall be submitted as provided in the procedures of the Division of Legislative Automated
87 Systems for the processing of legislative documents and reports and shall be posted on the General
88 Assembly's website.