

**ACT 310**

S.B. NO. 2506

A Bill for an Act Relating to Civil Identification.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the United States enacted the REAL ID Act of 2005, P.L. 109-13. The REAL ID Act sets forth in title II, specifically sections 201 and 202, the kind of documentation required and procedures to be followed in issuing driver's licenses and non-driver's, or civil, identification cards. Pursuant to section 37.51 of title 6 of the Code of Federal Regulations,

as amended, volume 76 issue 44 Federal Register pages 12269-12271 (March 7, 2011), the REAL ID Act must be implemented by January 15, 2013.

The legislature further finds that driver's licenses and non-driver's identification cards that do not comply with the REAL ID Act on or after January 15, 2013, will not be recognized by federal agencies, such as the Transportation Security Administration, and may not be recognized by other states. The REAL ID Act must be implemented on a timely basis in order to permit Hawaii's people to travel and to do business with the federal government and other states.

The legislature also finds that Hawaii is unique in that the counties, under the general supervision of the director of transportation, have been delegated the function of implementing the state driver's license program since 1937. Under current law, the department of the attorney general issues non-driver's, or civil, identification cards. It is imperative that the two functions be combined in order to comply with the REAL ID Act.

The purpose of this Act is to:

- (1) Consolidate the driver's license and civil identification programs for the State of Hawaii under the director of transportation;
- (2) Allow county examiners of drivers to issue civil identification cards; and
- (3) Ensure this consolidation effort and full implementation of this Act to be accomplished by January 15, 2013.

SECTION 2. Chapter 286, Hawaii Revised Statutes, is amended by adding a new subpart to part VI to be appropriately designated and to read as follows:

#### "B. CIVIL IDENTIFICATION CARDS

**§286-A Issuance of identification card or temporary card.** (a) To obtain an identification card from the examiner of drivers, an individual shall complete an application pursuant to section 286-C.

(b) The examiner of drivers, upon receipt of the application by any individual who is a resident or a temporary resident of this State, shall issue an identification card to that individual upon receipt of any appropriate fee established pursuant to section 286-I.

(c) The identification card shall be similar in size, shape, and design to a driver's license, but shall not entitle the individual to whom it is issued to operate a motor vehicle.

(d) The issuance of an identification card pursuant to this section shall not place upon the State of Hawaii or any agency any liability for the misuse or the acceptance of the identification card as valid identification, which shall be left entirely to the discretion of any individual to whom such card is presented.

**§286-B Oaths and investigations.** The examiner of drivers and each authorized subordinate may administer oaths and require and take oral or written statements under oath of any individual in connection with any information required under this subpart or any rule under this part.

**§286-C Application for identification card.** (a) Application for the identification card shall be made in person by any adult or minor. The minimum age for minors to obtain an identification card shall be ten years of age. In the case of a minor under the age of fourteen years, the application shall be made on the minor's behalf by the parent, or by another individual in loco parentis of the minor who can provide proof of guardianship. In the case of an incompetent

individual, the application shall be made by the individual having the custody or control of or maintaining the incompetent individual.

(b) Application for renewal of an identification card issued after November 1, 1998, for an individual eighty years of age or older may be done by mailing in a completed application and fee, if there is no change in name and citizenship status. The director shall adopt rules to allow for renewal by mail for individuals with physical or intellectual disabilities for whom application in person presents a serious burden.

(c) Every application for an identification card or duplicate of an identification card shall be made on a form developed by the director and furnished by the examiner of drivers, signed by the applicant, and signed by the applicant's parent or guardian if the applicant is under eighteen years of age. The application shall contain the following information:

- (1) Name and complete address, including the number and street name, of the applicant's permanent residence;
- (2) The applicant's occupation and any pertinent data relating thereto;
- (3) The applicant's citizenship status;
- (4) The applicant's date and place of birth;
- (5) General description of the applicant, including the applicant's gender, height, weight, hair color, and eye color;
- (6) The applicant's left and right index fingerprints or, if clear impressions cannot be obtained, other identifying imprints as specified by rules of the director;
- (7) The social security number of the applicant; and
- (8) A digitized frontal photograph of the applicant's full face.

Each applicant shall present documentary evidence as required by the examiner of drivers of the applicant's age and identity, and the applicant shall swear or affirm that all information given is true and correct.

(d) The application also shall state whether the applicant has an advance health-care directive. If the applicant has an advance health-care directive, the identification card shall bear the designation "AHCD".

(e) The examiner of drivers, in accordance with section 11-15, at the time of application, shall make available an application for voter registration to every applicant for an identification card who is eligible to register to vote.

(f) The examiner of drivers shall maintain a suitable, indexed record of all applications.

(g) For the purpose of this section, "AHCD", which stands for "advance health-care directive", means an individual instruction in writing, a living will, or a durable power of attorney for health care decisions.

**§286-D Procedure.** (a) All information required by section 286-C shall be obtained by employees of the examiner of drivers as provided for by rules of the director and by individual interviews with the applicant for the identification card or parent, individual in loco parentis, or guardian, as shown by letters of guardianship. Every applicant or individual providing information on behalf of any applicant under this part shall answer truthfully all questions, furnish all information within the possession or knowledge of the individual that may be asked or required by the employee within the scope of the requirements of this subpart, and submit to the examiner of drivers all information and supporting documentation required by rules of the director.

(b) Special provisions may be made by rules adopted by the director.

(c) The examiner of drivers may require an applicant, or any individual providing information on behalf of an applicant, to furnish original or certified copies of documents to establish or corroborate the information required to es-

establish identity under this subpart and may, by rules, set forth what documents will be required to support or corroborate certain information.

**§286-E Contents and characteristics; form.** (a) Each identification card issued by the examiner of drivers shall display a distinguishing number assigned to the cardholder, and shall display the following inscription:

“STATE OF HAWAII IDENTIFICATION CARD”

(b) The examiner of drivers, after obtaining the fingerprint of the applicant as provided in this subpart and after obtaining the information required by or pursuant to this subpart, shall issue to each applicant an identification card in a form and with identifying information that the director deems necessary and appropriate.

(c) The identification card shall not display the cardholder’s social security number.

(d) The identification card shall be designed to prevent its reproduction or alteration without ready detection.

(e) The identification card for individuals under twenty-one years of age shall have characteristics prescribed by the examiner distinguishing it from that issued to a individual who is twenty-one years of age or older.

**§286-F Expiration; renewal; replacement.** (a) Every identification card issued under this subpart, whether an original or a renewal, shall bear an expiration date that shall be the date and month of the individual’s birthday eight years after the year of issuance; provided that if the individual is a legal nonimmigrant, the certificate shall bear an expiration date that is the same as the expiration date on the individual’s arrival-departure record, CBP Form I-94. A cardholder may renew the cardholder’s identification card within six months before the day on which it expires by filing an application in accordance with section 286-C and paying the prescribed fee established by rules of the director.

(b) If an identification card is lost, destroyed, stolen, or mutilated, the individual to whom the identification card was issued may obtain a duplicate by paying the fee established by rules of the director and by:

- (1) Furnishing suitable proof of the loss, destruction, or mutilation to the examiner; and
- (2) Filing an application and presenting documentary evidence under section 286-C.

Any individual who loses an identification card and, after obtaining a duplicate, finds the original, shall immediately surrender the original to the examiner.

(c) The examiner of drivers shall cancel any identification card upon determining that the identification card was obtained unlawfully, issued in error, or altered. The examiner also shall cancel a REAL ID compliant identification card that is surrendered to the examiner of drivers after the cardholder has obtained a duplicate or replacement REAL ID compliant identification card, or if a REAL ID-compliant driver’s license has been previously issued.

(d) No agent of the State or its political subdivisions shall condition the granting of any benefit, service, right, or privilege upon the possession by any individual of an identification card. Nothing in this section shall preclude any publicly operated or franchised transit system from using an identification card for the purpose of granting benefits or services of the system. No individual shall be required to apply for, carry, or possess an identification card.

**§286-G Identification cards not to be altered; duties of holder; lost certificates.** (a) No individual, except agents of the examiner acting pursuant to the

authority of law, shall alter, deface, or destroy any identification card. Except as specifically authorized by this section or the rules of the director, no cardholder shall loan or give the individual's identification card to any other individual, and no individual shall use the identification card of any other individual.

(b) Any individual whose identification card is stolen or otherwise lost, altered, defaced, or destroyed, may at any time apply for a duplicate identification card. The duplicate shall be issued by the examiner of drivers upon being satisfied as to the loss, alteration, defacing, or destruction. In the case of an altered or defaced identification card, the identification card, if available, shall be surrendered by the cardholder and canceled by the examiner.

(c) Any individual finding or coming into possession of the identification card of any other individual shall promptly return or deliver the same to the owner thereof, the examiner of drivers that issued it, or any law enforcement officer.

**§286-H Correction or alteration of records and identification cards in cases of error or subsequent changes concerning names, citizenship, description, etc.** (a) A cardholder who, after receiving an identification card, has a change in one or more of the following:

- (1) Name, legally changed by marriage, divorce, adoption, legitimization, order of the lieutenant governor, or other legal means;
- (2) Citizenship status;
- (3) Address; or
- (4) Individual in charge of the cardholder (in the case of a minor or incompetent individual),

within thirty days after the change, shall report the change, submit supporting documents, and present the cardholder's identification card to the examiner. The examiner of drivers, upon being furnished with satisfactory proof as to the change, and receiving payment of the fee, shall cancel the identification card and issue a new identification card bearing the new name, citizenship status, or address of the cardholder, making appropriate notation of the facts upon the records of the examiner.

(b) If any error has been made in any item of information contained in the records of the examiner of drivers or on the identification card concerning any cardholder, the examiner of drivers or the cardholder, upon application and upon provision of evidence satisfactory to the examiner that an error has been committed, may correct the error and, in such case, shall make appropriate changes or notations stating the error and the correct information in the records of the examiner of drivers and on the identification card.

(c) If any item of the cardholder's personal information was originally correct, but will change after issuance of the identification card and the examiner of drivers finds the change material, the examiner of drivers may register the change and alter the records and identification card to conform thereto, upon receipt of satisfactory evidence of the change and approval of the examiner.

**§286-I Rules.** For the purpose of carrying out this subpart, the director, pursuant to chapter 91, shall adopt rules including rules assessing reasonable fees for the services provided under this subpart. The rules shall authorize the examiner of drivers to waive any fee in cases of extreme hardship and provide criteria for determining whether a waiver is warranted.

**§286-J Forms.** The director may prepare, prescribe, and furnish, in conformity with this subpart, forms for questionnaires, notices, fingerprint cards or forms, certificates of identification, instructions, and all other forms necessary

or proper for the prompt, efficient, and adequate execution of the functions of the examiner of drivers set forth in this subpart.

**§286-K Custody and use of records; confidential information.** (a) All information and records acquired by the examiner of drivers under this subpart shall be confidential. All information and records shall be maintained in an appropriate form and in an appropriate office in the custody and under the control of the examiner. The information shall be available only to authorized individuals under such restrictions as the director shall prescribe. The examiner may dispose of any application or identification card, or information or record relating to the application or identification card, which does not include a social security number, without regard to chapter 94, whenever, in the examiner's discretion, retention of the information or record is no longer required or practicable.

(b) No officer or employee of the examiner of drivers shall divulge any information concerning any cardholder acquired from the records of the examiner or acquired in the performance of any of the officer's or employee's duties under this part to any individual not authorized to receive the same pursuant to this part. No individual acquiring from the records any information concerning any cardholder shall divulge the information to any individual not so authorized to receive the same.

**§286-L Civil identification card fee special fund.** There is established in the state treasury a special fund to be known as the civil identification card fee special fund. The fund shall consist of all fees assessed for the processing and issuance of identification cards. The fund shall be used for the purposes of the identification card program. The fund shall be administered by the director. The fund shall be held separate and apart from all other moneys, funds, and accounts in the state treasury. Interest and investment earnings credited to the assets of the fund shall become a part of the fund. Any balance remaining in the fund at the end of any fiscal year shall be carried over to the next fiscal year.

**§286-M Reimbursement to counties.** The counties shall be reimbursed the incremental costs incurred in the administration of this subpart. The amount of reimbursement shall be determined by the director of transportation."

SECTION 3. Section 286-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"“Identification card” means a document made or issued under part VI that, when completed with information concerning a particular individual, is intended solely for the purposes of civil identification.”

SECTION 4. Section 128-6, Hawaii Revised Statutes, is amended to read as follows:

**“§128-6 Civil defense powers, in general.** The governor may:

- (1) Plans and programs. Prepare comprehensive plans and programs for the civil defense of this State, the plans and programs to be integrated into and coordinated with the civil defense plans of the federal government and of other states to the fullest possible extent; and coordinate the preparation of plans and programs for civil defense by the political subdivisions of the State, the plans to be integrated into and coordinated with the civil defense plans and programs of the State to the fullest possible extent;

- (2) Training, public information. Institute training programs and public information programs;
- (3) Direct operational control, when. In the event of disaster or emergency beyond local control, or which in the opinion of the governor is such as to make state operational control necessary, assume direct operational control over all or any part of the civil defense functions within this State;
- (4) Insignia. Provide or authorize suitable insignia of authority for all authorized personnel;
- (5) Registration and blood typing. Provide for:
  - (A) Compulsory registration and identification to the extent that voluntary registration and identification has not been accomplished under chapter [~~846, part II;~~] 286, part VI, subpart B; and
  - (B) Compulsory RHo blood typing on females of child bearing age or younger, and such other compulsory blood typing as may be approved by competent medical authority;
- (6) Protection of facilities. Require each public utility, or any person owning, controlling, or operating a vital facility, to protect and safeguard its or the person's property, or to provide for the protection and safeguarding; and provide for the protection and safeguarding of all public properties, or such other properties as the governor may consider advisable; provided that without prejudice to the generality of the foregoing two clauses, the protecting and safeguarding may include the regulation or prohibition of public entry thereon, or the permission of the entry upon such terms and conditions as the governor may prescribe;
- (7) Explosives, etc. Except as provided in section 134-7.2, whenever in the governor's opinion the laws of the State do not adequately provide for the common defense, public health, safety, and welfare, investigate, regulate, or prohibit the storage, transportation, use, possession, maintenance, furnishing, sale, or distribution of, as well as any transaction related to, explosives, firearms, and ammunition, inflammable materials and other objects, implements, substances, businesses, or services of a hazardous or dangerous character, or particularly capable of misuse by disloyal persons or the enemy, or obstructive of or tending to obstruct military operations or civil defense, including, without limitation, intoxicating liquor and the liquor business; and authorize the seizure and forfeiture of any such objects, implements, or substances unlawfully possessed, as provided in section 128-28; and
- (8) Air raid drills, etc. Direct or control, as may be necessary for civil defense:
  - (A) Air raid drills, and other alerts, tests, and exercises;
  - (B) Blackouts and practice blackouts;
  - (C) Partial or full mobilization of civil defense organizations in advance of actual disaster;
  - (D) Warnings and signals for drills, alerts, or attacks, and the mechanical devices to be used in connection therewith;
  - (E) Shutting off water mains, gas mains, electric power connections, or suspension of other services; and to the extent permitted by or under federal law, suspension of radio transmission;

- (F) The conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic during, before, and after blackouts, drills, alerts, or attacks;
- (G) Traffic control;
- (H) The congregation of the public in stricken or danger areas or under dangerous conditions; and
- (I) The evacuation and reception of the civilian population; provided that only during a civil defense emergency period shall there be instituted under this paragraph mandatory or prohibitory requirements having the force and effect of law.”

SECTION 5. Chapter 286, Hawaii Revised Statutes, is amended by amending the title of part VI to read as follows:

**“PART VI. MOTOR VEHICLE DRIVER LICENSING AND CIVIL IDENTIFICATION CARDS”**

SECTION 6. Chapter 286, Hawaii Revised Statutes, is amended by designating sections 286-101 to 286-140, as subpart A and inserting a title before section 286-101, to read as follows:

**“A. MOTOR VEHICLE DRIVER LICENSING”**

SECTION 7. Section 286-102, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) No person shall receive a driver’s license without surrendering to the examiner of drivers all valid driver’s licenses and all valid identification cards in the person’s possession. All licenses and identification cards so surrendered shall be returned to the issuing authority, together with information that the person is licensed in this State; provided that with the exception of driver’s licenses issued by any Canadian province, a foreign driver’s license may be returned to the owner after being invalidated pursuant to issuance of a Hawaii license; and provided further that the examiner of drivers shall notify the authority that issued the foreign license that the license has been invalidated and returned because the owner is now licensed in this State. No person shall be permitted to hold more than one valid driver’s license at any time.”

SECTION 8. Sections 286-101, 286-102(e), 286-104, 286-106, 286-107(c), 286-108(a), 286-110(a), 286-112(a) and (c), 286-113, 286-114, 286-122(a), 286-123, 286-125, 286-134, 286-136(a), and 286-137, Hawaii Revised Statutes, are amended by substituting the phrase “this subpart” wherever the phrase “this part” appears.

SECTION 9. Chapter 846, part II, Hawaii Revised Statutes, is repealed.

SECTION 10. To provide for the transition to issuance of civil identification cards by the examiner of drivers, all valid and unexpired civil identification cards issued by the department of the attorney general up to and including December 31, 2012, shall remain valid for all purposes until their stated expiration date.

SECTION 11. All rights, powers, functions, and duties of the department of the attorney general as they relate to the civil identification program are transferred to the department of transportation; provided that the department



of the attorney general shall retain such authority as necessary to ensure uniformity in the issuance of identification cards.

All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

All employees who occupy civil service positions and whose functions are transferred to the department of transportation or the examiners of drivers of the respective counties, pursuant to a plan approved by the State and the counties, shall retain their civil service status (permanent or temporary). Employees shall be transferred without loss of salary, seniority, retention points, prior service credit, any vacation and sick leave credits previously earned, and other rights, benefits, and privileges, in accordance with state personnel laws and this Act, provided that the employees possess the minimum qualifications and public employment requirements for the class and/or position to which transferred or appointed, as applicable, provided further that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

Any employee who, prior to this Act, is exempt from civil service and is transferred as a consequence of this Act, may continue to retain the employee's exempt status, but shall not be appointed to a civil service position because of this Act. An exempt employee who is transferred by this Act shall not suffer any loss of prior service credit, any vacation and sick leave credits previously earned, or other employee benefits or privileges as a consequence of this Act, provided that the employees possess legal and public employment requirements for the position to which transferred or appointed, as applicable; provided that subsequent changes in status may be made pursuant to applicable employment and compensation laws. The director of transportation or the examiners of drivers of the respective counties, pursuant to a plan approved by the State and counties, may prescribe the duties and qualifications of such employees and fix their salaries without regard to chapter 76, Hawaii Revised Statutes.

**SECTION 12.** All rules adopted by the attorney general to implement the provisions of part II, chapter 846, Hawaii Revised Statutes, the substance of which is made applicable to the director of transportation under this Act, shall remain in full force and effect until amended or replaced by the director of transportation pursuant to rules adopted pursuant to chapter 91, Hawaii Revised Statutes.

All rules adopted by the attorney general, deeds, leases, contracts, loans, agreements, permits, or other documents executed or entered into by or on behalf of the department of the attorney general or the attorney general pursuant to the provisions of the Hawaii Revised Statutes that are reenacted or made applicable to the department of transportation or director of transportation by this Act, shall remain in full force and effect. From January 1, 2013, every reference to the department of the attorney general or the attorney general shall be construed as a reference to the department of transportation or the director of transportation, as appropriate.

**SECTION 13.** All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, balances in the state identification revolving fund, and other personal property heretofore made, used, acquired, or held by the department of the attorney general relating to the functions transferred to the department of transportation shall be transferred with the functions to which they relate.

SECTION 14. The balance of all unexpended or unencumbered moneys in the state identification revolving fund, established by section 846-27, Hawaii Revised Statutes, as of the effective date of this Act shall be transferred to the civil identification card fee special fund, established by section 286-L, Hawaii Revised Statutes, on the effective date of this Act.

SECTION 15. This Act shall be liberally construed to accomplish the purposes set forth in section 1 of this Act.

SECTION 16. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 17. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 18. All laws and parts of laws heretofore enacted that are in conflict with the provisions of this Act are hereby amended to conform herewith.

SECTION 19. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 20. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 21. This Act shall take effect on January 1, 2013.

(Approved July 9, 2012.)