

BILL ANALYSIS

Senate Research Center
82S10030 PAM-D

S.B. 9
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Transportation & Homeland Security
6/3/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The bill contains three main parts: a prohibition on sanctuary cities, required use of secure communities, and statutory authority for DPS to authenticate lawful presence when issuing state identification (IDs) or driver's licenses.

More specifically, this legislation provides that a local governmental entity may not enact a policy prohibiting the enforcement of state or federal immigration laws including the Federal Immigration and Nationality Act. If an entity does enact a policy like this, then the attorney general of Texas (OAG) may file suit against the entity and should the OAG prevail, the entity would be subject to the loss of state grant funding. This bill does not place an unfunded mandate on cities. As long as local governments do not make it policy to forgo state and federal laws, this bill will not affect them. This bill also specifically prohibits racial profiling. This legislation also brings local policy in line with Department of Public Safety of the State of Texas (DPS) policy and creates a uniform standard across the state law enforcement when it comes to inquiring about immigration status.

Then, for clarity in how immigration status ought to be obtained by a local law enforcement agency, this bill requires every person arrested in Texas to be run through the federal Secure Communities Program. This program is already in use in all county jails in the state. This legislation would address a loophole where people who are arrested and never taken to county jail are not ever run through the program.

Finally, a driver's license will expire with a valid stay in the United States and further enumerate the authority of DPS to validate lawful presence to obtain a driver's license. Unless DPS already has the information they will be required to collect proof of United States citizenship or legal resident or documentation of lawful presence. If the applicant cannot or will not supply this documentation, DPS may not issue the ID. Additionally, with these new security measures around the driver's license, this bill also works to address the concern about driver's license clerks not knowing what a valid form of temporary visitor identification is, the bill now requires that DPS designate certain driver's license offices as "temporary visitor stations." These offices must have at least two staff members specially trained to identify the 25 types of documentation in DPS's "Temporary Visitor Issuance Guide" and must act as a resource for other offices around the state.

As proposed, S.B. 9 amends current law relating to the enforcement of state and federal laws governing immigration by certain governmental entities and the administration of certain documentation of citizenship status and other lawful admittance by the Department of Public Safety.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Department of Public Safety of the State of Texas is modified in SECTION 15 (Section 522.005, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 370, Local Government Code, by adding Section 370.0031, as follows:

Sec. 370.0031. LOCAL GOVERNMENT POLICY REGARDING ENFORCEMENT OF STATE AND FEDERAL IMMIGRATION LAWS. (a) Provides that this section applies to the governing body of a municipality, county, or special district or authority, except as provided by Subsections (b) and (b-1); an officer, employee, or other body that is part of a municipality, county, or special district or authority, including a sheriff, municipal police department, municipal attorney, or county attorney; and a district attorney or criminal district attorney.

(b) Provides that this section does not apply to a school district or open-enrollment charter school or a junior college district. Provides that this section does not apply to the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Section 513, Pub. L. No. 93-380 (20 U.S.C. Section 1232g).

(b-1) Provides that this section does not apply to a hospital or hospital district.

(c) Prohibits an entity described by Subsection (a) from adopting a rule, order, ordinance, or policy under which the entity prohibits the enforcement of the laws of this state or federal law relating to immigrants or immigration, including the federal Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.).

(d) Provides that an entity described by Subsection (a), in compliance with Subsection (c), an entity described by Subsection (a) is prohibited from prohibiting a person employed by or otherwise under the direction or control of the entity from doing any of the following:

(1) inquiring into the immigration status of a person lawfully detained for the investigation of a criminal offense or arrested;

(2) with respect to information relating to the immigration status, lawful or unlawful, of any person lawfully detained for the investigation of a criminal offense or arrested sending the information to or requesting or receiving the information from United States Citizenship and Immigration Services or United States Immigration and Customs Enforcement, including information regarding an individual's place of birth, maintaining the information, or exchanging the information with another federal, state, or local governmental entity;

(3) assisting or cooperating with a federal immigration officer as reasonable and necessary, including providing enforcement assistance; or

(4) permitting a federal immigration officer to enter and conduct enforcement activities at a municipal or county jail to enforce federal immigration laws.

(d-1) Prohibits an entity described by Subsection (a) or a person employed by or otherwise under the direction or control of the entity from considering race, color, language, or national origin while enforcing the laws described by Subsection (c) except to the extent permitted by the United States Constitution or the Texas Constitution.

(e) Prohibits an entity described by Subsection (a) from receiving state grant funds if the entity adopts a rule, order, ordinance, or policy under which the entity prohibits the enforcement of the laws of this state or federal laws relating to Subsection (c) or, by consistent actions, prohibits the enforcement of the laws of this state or federal laws relating to Subsection (c). Requires that state grant funds for the entity be denied for the fiscal year following the year in which a final judicial determination in an action brought under this section is made that the

entity has intentionally prohibited the enforcement of the laws of this state or federal laws relating to Subsection (c).

(f) Authorizes any citizen residing in the jurisdiction of an entity described by Subsection (a) to file a complaint with the attorney general if the citizen offers evidence to support an allegation that the entity has adopted a rule, order, ordinance, or policy under which the entity prohibits the enforcement of the laws of this state or federal laws relating to Subsection (c) or that, by consistent actions, prohibits the enforcement of the laws of this state or federal laws relating to Subsection (c). Requires the citizen to include with the complaint the evidence the citizen has that supports the complaint.

(g) Authorizes the attorney general, if the attorney general determines that a complaint filed under Subsection (f) against an entity described by Subsection (a) is valid, to file a petition for a writ of mandamus or apply for other appropriate equitable relief in a district court in Travis County or in a county in which the principal office of an entity described by Subsection (a) is located to compel the entity that adopts a rule, order, ordinance, or policy under which the local entity prohibits the enforcement of the laws of this state or federal laws relating to Subsection (c) or that, by consistent actions, prohibits the enforcement of the laws of this state or federal laws relating to Subsection (c) to comply with Subsection (c). Authorizes the attorney general to recover reasonable expenses incurred in obtaining relief under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

(h) Provides that an appeal of a suit brought under Subsection (g) is governed by the procedures for accelerated appeals in civil cases under the Texas Rules of Appellate Procedure. Requires the appellate court to render its final order or judgment with the least possible delay.

SECTION 2. Amends the heading to Chapter 370, Local Government Code, to read as follows:

CHAPTER 370. MISCELLANEOUS PROVISIONS RELATING TO HEALTH AND PUBLIC SAFETY APPLYING TO MORE THAN ONE TYPE OF LOCAL GOVERNMENT

SECTION 3. Amends Chapter 2, Code of Criminal Procedure, by adding Article 2.252, as follows:

Art. 2.252. VERIFICATION OF IMMIGRATION STATUS OF PERSON CHARGED WITH COMMITTING OFFENSE. (a) Requires a local law enforcement agency that has custody of a person who has been arrested and transported to a place of detention to verify the immigration status of the person by use of the federal Secure Communities program operated by United States Immigration and Customs Enforcement or a successor program.

(b) Provides that a local law enforcement agency is not required to conduct an immigration status verification under Subsection (a) of a person who is transferred to the custody of the agency by another law enforcement agency if the transferring agency, before transferring custody of the person, conducted an immigration status verification under Subsection (a).

SECTION 4. Amends Subchapter A, Chapter 521, Transportation Code, by adding Section 521.007, as follows:

Sec. 521.007. TEMPORARY VISITOR STATIONS. (a) Requires the Department of Public Safety of the State of Texas (DPS) to designate as temporary visitor stations certain driver's license offices.

(b) Requires that a driver's license office designated as a temporary visitor station under this section have at least two staff members who have completed specialized training on the temporary visitor issuance guide published by DPS.

(c) Requires that a driver's license office designated as a temporary visitor station provide information and assistance to other driver's license offices in the state.

SECTION 5. Amends Section 521.041(b), Transportation Code, to require DPS to maintain suitable indexes, in alphabetical or numerical order, that contain certain information, including the citizenship status of each holder of a license or personal identification certificate.

SECTION 6. Amends Section 521.101, Transportation Code, by adding Subsections (d-1), (f-2), (f-3), and (k) and amending Subsection (f), as follows:

(d-1) Requires DPS, unless the information has been previously provided to DPS, to require each applicant for an original, renewal, or duplicate personal identification certificate to furnish to DPS proof of the applicant's United States citizenship, or documentation described by Subsection (f-2).

(f) Provides that a personal identification certificate:

(1) for an applicant who is a citizen, national, or legal permanent resident of the United States or a refugee or asylee lawfully admitted into the United States expires on a date specified by DPS if the applicant is younger than 60 years of age, or does not expire if the applicant is 60 years of age or older; or

(2) for an applicant not described by Subdivision (1), expires on the earlier of a date specified by DPS, or the expiration date of the applicant's authorized stay in the United States; or the first anniversary of the date of issuance, if there is no definite expiration date for the applicant's authorized stay in the United States.

Deletes existing text providing that a certificate expires on a date specified by DPS, except that a certificate issued to a person 60 years of age or older does not expire.

(f-2) Requires an applicant who is not a citizen of the United States to present to DPS documentation issued by the appropriate United States agency that authorizes the applicant to be in the United States.

(f-3) Prohibits DPS from issuing a personal identification certificate to an applicant who fails or refuses to comply with Subsection (f-2).

(k) Provides that except as provided by this section, each personal identification certificate issued by DPS is required to be in the same format, have the same appearance and orientation, and contain the same type of information; and is prohibited from including any information that this chapter does not reference or require.

SECTION 7. Amends Section 521.103, Transportation Code, by adding Subsection (c) to provide that Sections 521.101(f-2) and (f-3) apply to a personal identification certificate for which application is made under this section.

SECTION 8. Amends Section 521.121, Transportation Code, by adding Subsection (e) to provide that, except as provided by this section, each personal identification certificate issued by DPS is required to be in the same format, have the same appearance and orientation, and contain the same type of information; and is prohibited from including any information that this chapter does not reference or require.

SECTION 9. Amends Sections 521.142(a) and (e), Transportation Code, as follows:

(a) Requires an applicant who is not a citizen of the United States to present to DPS documentation issued by the appropriate United States agency that authorizes the applicant to be in the United States before the applicant is authorized to be issued a driver's license.

(e) Requires that the application include any other information DPS requires to determine the applicant's identity, residency, competency, and eligibility as required by DPS or state law.

SECTION 10. Amends Section 521.1425, Transportation Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Authorizes DPS, except as provided by Subsections (b) (relating to the furnishing of certain information by each applicant) and (c), to require each applicant for an original, renewal, or duplicate driver's license to furnish to DPS the information required by Section 521.142 (Application for Original License).

(c) Requires DPS, unless the information has been previously provided to DPS, to require each applicant for an original, renewal, or duplicate driver's license to furnish to DPS proof of the applicant's United States citizenship, or documentation described by Section 521.142(a).

SECTION 11. Amends Section 521.271, Transportation Code, by amending Subsections (a) and (b) and adding Subsections (a-2), (a-3), and (a-4), as follows:

(a) Provides that each original driver's license, provisional license, instruction permit, or occupational driver's license issued to an applicant who is a citizen, national, or legal permanent resident of the United States or a refugee or asylee lawfully admitted into the United States expires on a certain date. Makes a nonsubstantive change.

(a-2) Provides that each original driver's license issued to an applicant who is not a citizen, national, or legal permanent resident of the United States or a refugee or asylee lawfully admitted into the United States expires on the earlier of the first birthday of the license holder occurring after the sixth anniversary of the date of the application, or the expiration date of the license holder's lawful presence in the United States as determined by the appropriate United States agency in compliance with federal law; or the first anniversary of the date of issuance, if there is no definite expiration date for the applicant's authorized stay in the United States.

(a-3) Provides that each original provisional license or instruction permit issued to an applicant who is not a citizen, national, or legal permanent resident of the United States or a refugee or asylee lawfully admitted into the United States expires on the earliest of the 18th birthday of the license holder, the first birthday of the license holder occurring after the date of the application, or the expiration of the license holder's lawful presence in the United States as determined by the United States agency responsible for citizenship and immigration in compliance with federal law.

(a-4) Provides that each original occupational driver's license issued to an applicant who is not a citizen, national, or legal permanent resident of the United States or a refugee or asylee lawfully admitted into the United States expires on the earlier of the first anniversary of the date of issuance, or the expiration of the license holder's lawful presence in the United States as determined by the appropriate United States agency in compliance with federal law.

(b) Provides that except as provided by Section 521.2711 (License Expiration: Person at Least 85 Years of Age), a driver's license that is renewed expires on the earlier of:

(1) the sixth anniversary of the expiration date before renewal if the applicant is a citizen, national, or legal permanent resident of the United States or a refugee or asylee lawfully admitted into the United States;

(1-a) for an applicant not described by Subdivision (1) the earlier of the sixth anniversary of the expiration date before renewal, or the expiration date of the applicant's authorized stay in the United States; or the first anniversary of the date of issuance, if there is no definite expiration date for the applicant's authorized stay in the United States; or

(2) for a renewal driver's license issued to a person whose residence or domicile is a correctional facility or a parole facility, the first birthday of the license holder occurring after the first anniversary of the date of issuance unless an earlier date is otherwise provided.

SECTION 12. Amends Section 521.2711, Transportation Code, by adding Subsection (c) to provide that, notwithstanding Subsections (a) (relating to the expiration of a driver's license of a person 85 years of age or older) and (b) (relating to the expiration of a renewed driver's license of a person 85 years of age or older), an original or renewal driver's license issued to an applicant who is 85 years of age or older and not a citizen, national, or legal permanent resident of the United States or a refugee or asylee lawfully admitted into the United States expires on the earlier of the second anniversary of the expiration date before renewal, or the expiration date of the applicant's authorized stay in the United States; or the first anniversary of the date of issuance if there is no definite expiration date for the applicant's authorized stay in the United States.

SECTION 13. Amends Section 521.272, Transportation Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Provides that, notwithstanding Sections 521.271 (License Expiration) and 521.2711, a driver's license issued under this section, including a renewal, duplicate, or corrected license, expires:

(1) if the license holder is a citizen, national, or legal permanent resident of the United States or a refugee or asylee lawfully admitted into the United States, on the first birthday of the license holder occurring after the date of application, except that the initial license issued under this section expires on the second birthday of the license holder occurring after the date of application; or

(2) if the applicant is not described by Subdivision (1), on the earlier of the expiration date of the applicant's authorized stay in the United States, or the first birthday of the license holder occurring after the date of application, except that the initial license issued under this section expires on the second birthday of the license holder occurring after the date of application.

(d) Creates this subsection from existing text. Provides that Subsection (c) does not apply to a provisional license, an instruction permit issued under Section 521.222 (Instruction Permit), or a hardship license issued under Section 521.223 (Hardship License).

SECTION 14. Amends Section 521.421, Transportation Code, by adding Subsection (a-3) to provide that, except as provided by Subsections (a-1) (relating to the amount of the fee for a personal identification certificate) and (a-2) (relating to the fee for a personal identification certificate for certain persons), the fee for a driver's license or personal identification certificate that is issued to a person who is not a citizen, national, or legal permanent resident of the United States or a refugee or asylee lawfully admitted into the United States and that is valid for not more than one year is \$24.

SECTION 15. Amends Section 522.005, Transportation Code, to authorize DPS to adopt rules necessary to carry out this chapter and the federal act and to maintain compliance with 49 C.F.R. Parts 383 and 384.

SECTION 16. Amends Section 522.030, Transportation Code, as follows:

Sec. 522.030. CONTENT OF LICENSE. (a) Creates this subsection from existing text. Makes no further changes to this subsection.

(b) Provides that except as provided by this section, each personal identification certificate issued by DPS:

(1) is required to be in the same format, have the same appearance and orientation, and contain the same type of information; and

(2) is prohibited from including any information that this chapter does not reference or require.

(c) Provides that to the extent of a conflict or inconsistency between this section and Section 522.013 (Nonresident License) or 522.051 (Expiration of License or Permit), Section 522.013 or 522.051 controls.

SECTION 17. Amends Section 522.033(b), Transportation Code, as follows:

(b) Provides that, notwithstanding Section 522.051, a commercial driver's license or commercial driver learner's permit issued under this section, including a renewal, duplicate, or corrected license, expires:

(1) if the license or permit holder is a citizen, national, or legal permanent resident of the United States or a refugee or asylee lawfully admitted into the United States, on the first birthday of the license holder occurring after the date of application, except that the initial license issued under this section expires on the second birthday of the license holder occurring after the date of application; or

(2) if the applicant is not described by Subdivision (1), on the earlier of the expiration date of the applicant's authorized stay in the United States, or the first birthday of the license holder occurring after the date of application, except that the initial license issued under this section expires on the second birthday of the license holder occurring after the date of application.

SECTION 18. Amends Section 522.052, Transportation Code, by adding Subsection (i) to require DPS, unless the information has been previously provided to DPS, to require each applicant for a renewal or duplicate commercial driver's license to furnish to DPS proof of the applicant's United States citizenship, or documentation described by Section 521.142(a).

SECTION 19. Requires DPS, not later than January 1, 2013, to submit to the legislature a report evaluating the effectiveness of the temporary visitor stations established under Section 521.007, Transportation Code, as added by this Act.

SECTION 20. Makes application of the changes in law made by this Act to Chapters 521 (Driver's Licenses and Certificates) and 522 (Commercial Driver's Licenses), Transportation Code, prospective.

SECTION 21. Effective date: upon passage or the 91st day after the last day of the legislative session.