



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

January 17, 2014

61884

The Honorable Thomas A. Balmer
Chief Justice, Oregon Supreme Court
Supreme Court Building
1163 State Street
Salem, OR 97310

Re: *Rebecca Straus and David Fidanque v. Ellen Rosenblum, Attorney General, State of Oregon*, SC S061884 (control)
Arthur Towers v. Ellen Rosenblum, Attorney General, State of Oregon, SC S061885
Kim Thatcher, Sal Esquivel and Richard LaMountain v. Ellen Rosenblum, Attorney General, State of Oregon, SC S061887

Dear Chief Justice Balmer:

Petitioner Rebecca Straus, David Fidanque, Arthur Towers, Kim Thatcher, Sal Esquivel and Richard LaMountain have filed a ballot title challenge in the above-referenced matter. Pursuant to ORS 250.067(4), the Secretary of State is required to file with the court the written comments submitted in response to the draft ballot title. Those written comments, under the cover of Elections Division Program Representative Lydia Plukchi's letter, are enclosed for filing with the court. Pursuant to ORAP 11.30(7), we also have enclosed for filing with the court the draft and certified ballot titles, together with their respective cover letters.

Sincerely,

/s/ Judy C. Lucas

Judy C. Lucas
Senior Assistant Attorney General
judy.lucas@doj.state.or.us

JCL:chc/4922146

cc: Gregory A. Chaimov/without encl.
Steven C. Berman/without encl.
Eric C. Winters/without encl.
Richard F. LaMountain/without encl.
Kim Thatcher/without encl.
Sal Esquivel/without encl.

IN THE SUPREME COURT OF THE STATE OF OREGON

REBECCA STRAUS and DAVID
FIDANQUE,

Petitioners,

v.

ELLEN F. ROSENBLUM, Attorney
General, State of Oregon,

Respondent.

ARTHUR TOWERS,

Petitioner,

v.

ELLEN ROSENBLUM, Attorney
General, State of Oregon,

Respondent.

KIM THATCHER, SAL ESQUIVEL
and RICHARD LAMOUNTAIN,

Petitioners,

v.

ELLEN ROSENBLUM, Attorney
General, State of Oregon,

Respondent.

Supreme Court No. S061884 (Control)

Supreme Court No. S061885

Supreme Court No. S061887

RESPONDENT'S ANSWERING
MEMORANDUM TO PETITIONS TO
REVIEW BALLOT TITLE RE:
REFERENDUM PETITION #301
(SUPREME COURT)

INTRODUCTION

Petitioners seek review of the Attorney General's ballot title for
Referendum # 301 (2014), which requires the Department of Transportation to
create and issue a "driver card." Petitioner Towers and petitioners Straus and
Fidanque challenge all parts of the ballot title. Petitioners Thatcher, Esquivel,

and LaMountain challenge only one sentence, in the summary. The court should certify the Attorney General's ballot title without modification.

A. Current law

Currently, Oregon law requires “proof of legal presence in the United States” and either a Social Security number or proof of ineligibility for a Social Security number as prerequisites to obtaining driving privileges from the state. ORS 807.021(1).

B. Changes to the law

This measure would direct the Oregon Department of Transportation to create and issue a driver card establishing that the holder of the card has driving privileges in Oregon, as specified on the driver card. An applicant for a driver card must meet all the eligibility requirements for a driver license of the type applied for, except that the applicant need not provide proof of legal presence in the United States. The driver card has limited uses as personal identification of the card holder.

C. The caption

To identify the “actual major effect” of a measure, this court looks to “the text of the proposed measure to determine the changes that the proposed measure would enact in the context of existing law” and then evaluates whether

the caption “reasonably identifies those effects.” *Girod v. Kroger*, 351 Or 389, 397, 268 P3d 562 (2011), *citing Rasmussen v. Kroger*, 350 Or 281, 285, 253 P3d 1031 (2011). “Other, subsidiary effects may certainly be described, but each flows from the central effect of the measure * * *.” *Girod*, 351 Or at 398.

The Attorney General’s caption states:

Provides Oregon resident “driver card” without
requiring proof of legal presence in the United States

1. Petitioner Towers

Petitioner Towers argues that the caption is underinclusive, emphasizing only one aspect of the measure: that an applicant may obtain a driver card without requiring proof of legal presence in the United States. According to petitioner Towers, the caption fails to substantially comply with ORS 250.035(2)(a) because it “does not discuss the myriad requirements that an applicant must fulfill to obtain a driver card or what a driver card actually does.” Towers argues that a driver card not only shows the holder’s driving privileges, but also may be used for other purposes enumerated in the measure: to establish that the holder is an anatomical donor, an emancipated minor, or a veteran; as identification for a judgment document in a civil action, a lien record abstract, a formal record of a support payment; and for identifying a missing person.

The subject matter of the referendum measure—its major effect—is to establish a new “driver card” showing the Department of Transportation has granted driving privileges to the card’s holder without requiring the holder to prove legal presence in the United States. In other words, the subject matter of the measure is whether otherwise qualified Oregon residents may be afforded driving privileges without proof of legal presence in the United States.

Therefore, the court should reject Towers’ argument. The purpose of the caption is not to identify every use to which the card may be put. Nor must the caption inform voters the duration of the driver card or what the driver card cannot be used for, as Towers suggests. The major effect of the law, as stated, is to provide a mechanism for the state to grant driving privileges without requiring proof of legal presence in the United States.

Towers also argues that the phrase “legal presence in the United States” could be confusing to voters because, he asserts, it is “a legal term of art uninformative to non-lawyers.” Towers acknowledges that the phrase appears in ORS 807.021, the statute governing proof requirements for a driver license, permit, or identification card, but he argues that voters are unlikely to be aware that it does so. The court should reject that argument. Language the legislature has adopted in the same context is appropriate for explaining the proposed

measure to voters. In addition, contrary to Towers' additional assertion, voters are unlikely to confuse "legal presence in the United States" with residency in Oregon.

Finally, Towers contends that the term "driver card" should not be in quotation marks, which "would leave voters with the erroneous impression that it is impossible to discern with any specificity what a driver card actually is." The court should reject that argument. It is appropriate to set off with quotation marks to "direct[] and focus[] the reader's attention on * * * critical terms" of the measure. *Morgan v. Myers*, 342 Or 165, 169, 149 P3d 1160 (2006) ("putting the words 'conduct' and 'personal behavior' in quotation marks directs and focuses the reader's attention on those critical terms without requiring the omission of any word from the caption."). *See Crabtree v. Paulus*, 296 Or 325, 327, 675 P2d 488 (1984) (the court set off the word "reliable" in quotation marks "to show that the proposed amendment, rather than the respondent or this court uses this word"). Here, the concept of a "driver card" is a new one for Oregonians and it is helpful to focus the voter's attention on this critical term.

In addition, the term "driver card" has no independent legal meaning outside the proposed measures in which it appears. Therefore, setting it off

with quotation marks is appropriate. *See Rooney v. Kulongoski*, 322 Or 15, 45 n 14, 902 P2d 1143 (1995) (the court set off the term “minority status” with quotation marks for that reason).

2. Petitioners Straus and Fidanque

Petitioners Straus and Fidanque identify three purported flaws in the draft caption. First, they argue that the caption fails “to capture all significant changes the measure would enact”—in particular, driver card applicants must meet “safety-related qualifications.” They contend that the caption fails to substantially comply with ORS 250.035(2)(a) by “focusing on one requirement that an applicant need not possess,” rather than the safety requirements an applicant must meet. That argument lacks merit. All persons requesting driving privileges must meet safety-related requirements; the measure does not change the law in that respect.

The major law change and major effect of the measure is providing a mechanism to afford driving privileges to otherwise qualified Oregon residents without requiring proof of legal presence in the United States.

Second, these petitioners contend that the Attorney General’s caption fails to inform voters “[t]hat there are different uses for a driver card than a driver license.” They assert that “[p]ermissible uses of a driver card were a

significant issue in the legislative process” resulting in SB 833, which is the subject of this referendum. The distinction between the driver card and other grants of driving privileges is significant, but is properly addressed elsewhere in the ballot title.

Third, they object to placing the term “driver card” in quotation marks. They assert that doing so “improperly gives voters the impression that the term driver card is ambiguous or has multiple meanings.” For the reasons already discussed, the court should reject petitioners’ argument that placing “driver card” in quotation marks takes the caption out of substantial compliance with ORS 250.035(2)(a).

D. The result statements

The Attorney General’s result statements provide:

Result of “Yes” Vote: “Yes” vote directs Department of Transportation to issue “driver card” to Oregon resident meeting specified eligibility, without requiring proof of legal presence in United States.

Result of “No” Vote: “No” vote rejects law directing Department of Transportation to issue “driver card” to eligible Oregon resident without requiring proof of legal presence in United States.

The result statements substantially comply with ORS 250.035(2)(b) and (c).

1. Petitioner Towers

Petitioner Towers reiterates his objections to the caption with regard to the “Yes” results statement. The court should reject those arguments, as above. Towers argues that the “No” result statement “fails to describe the actual result if the measure is rejected.” We disagree: the actual result if the measure does not pass is a rejection of the proposed “driver card.”

2. Petitioners Straus and Fidanque

These petitioners argue that the “Yes” result statement suffers from the same defects as the caption, and additionally fails to inform voters of “the basic eligibility requirements for a driver card: demonstrate safe driving ability, provide proof of identity and Oregon residency for at least one year.”

They contend that the “No” statement carries forward the problems of the caption and “Yes” result statement.

Those arguments lack merit. Contrary to the petitioners’ apparent contention, the differences between a driver card and other grants of driving privileges are not “the result if the state measure is approved.” ORS 250.035(2)(b). Thus, they need not appear in the “Yes” statement.

For the same reason that the “Yes” statement does not require modification, the “No” result, which states the result if the measure is rejected, substantially complies with ORS 250.035(2)(c).

E. The summary

The Attorney General’s summary provides:

Summary: Current law requires any applicant for an Oregon driver license or permit to provide proof of legal presence in the United States. Measure directs the Department of Transportation to issue a “driver card” to an applicant who does not provide proof of legal presence in the United States, but who has otherwise complied with all Oregon requirements for the type of driving privileges sought, has provided proof of residence in Oregon for more than one year, and has provided proof of identity and date of birth. The driver card may not be used as identification for air travel, to enter a federal building, to register to vote or to obtain any government benefit requiring proof of citizenship or lawful presence in United States. Other provisions.

The summary substantially complies with the requirements of ORS 250.035(2)(d), providing “[a] concise and impartial statement of not more than 125 words summarizing the state measure and its major effect.”

1. Petitioner Towers

Petitioner Towers objects to the Attorney General’s summary for the same reasons he objects to the caption and result statements. As explained above, those arguments lack merit.

2. Petitioners Straus and Fidanque

These petitioners argue that the summary does not substantially comply with ORS 250.035(2)(d), because it places “driver card” in quotation marks and fails to inform voters that a driver card must contain features that easily distinguish it from a driver license. The significance of those features—to ensure that it is not used for prohibited purposes—is sufficiently addressed by the summary’s description of those prohibited uses. As stated above, the use of quotation marks to set off “driver card,” thereby indicating that it has no meaning outside the measure, is appropriate.

3. Petitioners Thatcher, Esquivel, and LaMountain

These petitioners (also chief petitioners on the measure) contend that the summary does not substantially comply with ORS 250.035(2)(d). The petitioners’ argument is directed exclusively to the last full sentence in the summary, claiming that sentence is deficient for three reasons: (1) it “does not pertain to an identified, actual effect of enacting the measure”; (2) it “uses misleading, politically charged phrases”; and (3) it “speculates about the possible effects of a proposed measure.”

The sentence petitioners object to provides:

The driver card may not be used as identification for air travel, to enter a federal building, to register to vote or to obtain any government benefit requiring proof of citizenship or lawful presence in United States.

Petitioners contend the sentence implies that the measure has only a limited list of prohibited uses, as opposed to a limited list of permissible uses.

In fact, petitioners assert, the measure contains only one prohibited use: the holder may not be issued a commercial driver license. The court should reject that argument, because the prohibited uses stated in the summary distinguish the driver card from other, existing grants of driving privileges. The summary is the appropriate part of the ballot title to inform voters of that distinction.

Petitioners contend that the challenged sentence is not impartial and impermissibly includes “politically charged” terms. That argument lacks merit. Although no one would argue that there are not politically charged issues surrounding the requirement of proof of legal presence in the country, none of the terms used in the sentence is biased or politically charged.

In addition, petitioners assert, three of the prohibited uses identified in the summary pertain to activities that are subject to federal, not state law, and therefore are not “major effects” of the measure. The fourth prohibited use (registering to vote), according to petitioners, is also not a major effect of the

measure. Petitioners' argument is not well taken. It is not impermissible for the summary to inform voters what the measure does not authorize, or that the measure retains existing law. In this case, failure to state the driver card may not be used for identification for certain purposes could imply inaccurately that the driver card could be used as identification for those purposes. *See Berman v. Kroger*, 347 Or 509, 514, 225 P3d 32 (2009) (requiring summary to state "that the measure would continue to prohibit the early release of inmates who are serving a mandatory minimum sentence," to eliminate inaccurate implication that the measure, if passed, could result in the early release of an inmate serving a mandatory minimum sentence); *see also Frazzini v. Myers*, 344 Or 648, 657, 189 P3d 1227 (2008) (the court approved a summary stating: "Domestic partnership law applies only within Oregon and does not change or confer rights under federal law.").

Nor does the summary speculate about the *possible* effects of the measure, as petitioners contend. Petitioners do not assert that the driver card *could* be used for the identified prohibited purposes, under the measure, nor could they. The measure, in section 5, specifies the exclusive uses of the driver card. Thus, it is beyond doubt that the card may not be used for the purposes identified in the summary.

In sum, none of the arguments of the petitioners require modification of the Attorney General's ballot title.

CONCLUSION

The court should certify the Attorney General's ballot title without modification.

Respectfully submitted,

ELLEN F. ROSENBLUM #753239
Attorney General
ANNA M. JOYCE #013112
Solicitor General

/s/ Judy C. Lucas

JUDY C. LUCAS #903285
Senior Assistant Attorney General
judy.lucas@doj.state.or.us

Attorneys for Respondent
Ellen Rosenblum, Attorney General,
State of Oregon

KATE BROWN
SECRETARY OF STATE



JIM WILLIAMS
DIRECTOR

255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722

(503) 986-1518

December 23, 2013

The Honorable Ellen Rosenblum, Attorney General
Anna Joyce, Solicitor General
Dept. of Justice, Appellate Division
400 Justice Building
Salem, OR 97310

Re: Gregory Chaimov and Steven Berman v. Ellen Rosenblum, Attorney General, State of Oregon
Petition to Review Ballot Title

Dear Ms. Joyce:

Pursuant to ORS 250.067(4), we transmit to you for filing with the court as part of the record in the above referenced matter, the written comments filed in this office pursuant to ORS 250.067(1), regarding referendum petition #301. We also enclose the draft and certified ballot titles with their respective transmittal letters.

Eric Winters on behalf of chief petitioners Kim Thatcher, Sal Esquivel and Richard LaMountain, has filed a petition to review the ballot title certified by the Attorney General. A notice of a filed petition has not been received in Secretary of State's office in a timely manner.

Sincerely,

Lydia Plukchi
Compliance Specialist

enclosures

Prospective Petition for State Measure

SEL 310

To the Secretary of State,

We, the undersigned, request a ballot title for the attached proposed measure to be submitted to the people of Oregon for their approval or rejection at the election to be held on **November 4 2014** *aph*

Type of Petition

☐ Initiative

☒ Referendum

☒ Statutory

☐ Constitutional

Designating Chief Petitioners

Every petition must designate not more than three persons as chief petitioners, setting forth the name, residence address and chief of officer of sponsoring organization if any. All chief petitioners for an initiative or referendum petition must sign this form. Please carefully read the instructions for circulators and signers on the back of this form.

Chief Petitioner Information

1	Name print	Signature
	Residence Address, Street/Route	
	City	State Zip Code
	Mailing Address if different, Street/Route	
	City	State Zip Code
	Email Address and/or Website	Day Phone Number Sponsoring Organization if any
	Name print	Sig

2	Residence	
	City	State Zip Code
	Mailing Address if different, Street/Route	
	City	State Zip Code
	Email Address and/or Website	Day Phone Number Sponsoring Organization if any

3	Name print	Sig
	Residence	
	City	State Zip Code
	Mailing Address if different, Street/Route	
	City	State Zip Code
	Email Address and/or Website	Day Phone Number Sponsoring Organization if any

RECEIVED
PM 8 PM 1 56
KATE BROWN
SECRETARY OF THE STATE

SEL 301: Statement One or More Petition Circulators Will be Paid

☒ Prospective Petition Initial Filing with Filing Officer

I/We hereby declare one or more petition circulators will be paid money or other valuable consideration for obtaining signatures of active registered voters on the attached petition. I/We understand the filing officer must be notified not later than the 10th day after I/we first have knowledge or should have had knowledge that no petition circulator will be compensated for obtaining signatures. By signing this document I/We state that no circulators will be compensated on this petition based on the number of signatures obtained by the circulator.

☐ Completed Petition Signatures Submitted to Filing Officer

By signing this document, I/We state that no circulators have been compensated on this petition based on the number of signatures obtained by the circulator.

Identify Petition

PROTECT OREGON DRIVER LICENSES

Signed

Date Signed

5/7/2013

Signed

Date Signed

5/7/2013

Signed

Date Signed

5/7/13

→ Statement must be signed by all chief petitioners for an initiative or referendum petition.



Warning

Supplying false information on this form may result in conviction of a felony with a fine of up to \$125,000 and/or prison for up to 5 years.

SEL 301: Statement No Petition Circulators Will be Paid

☐ Prospective Petition Initial Filing with Filing Officer

I/We hereby declare no petition circulators will be paid money or other valuable consideration for obtaining signatures of active registered voters on the attached petition. I/We understand the filing officer must be notified not later than the 10th day after I/we first have knowledge or should have had knowledge that any petition circulator will be compensated for obtaining signatures. By signing this document, I/We state that no circulators will be compensated on this petition.

☐ Completed Petition Signatures Submitted to Filing Officer

By signing this document, I/We state that no circulators were compensated for obtaining signatures on the attached petition.

Identify Petition

Signed

Date Signed

Signed

Date Signed

Signed

Date Signed

→ Statement must be signed by all chief petitioners for an initiative or referendum petition.

RECEIVED
2013 MAY 8 PM 1 52
KATE BROWN
SECRETARY OF THE STATE



Warning

Supplying false information on this form may result in conviction of a felony with a fine of up to \$125,000 and/or prison for up to 5 years.

Enrolled
Senate Bill 833

Sponsored by Senators SHIELDS, ROBLAN, THOMSEN, HANSELL, Representatives VEGA PEDERSON, HARKER, JOHNSON, GILLIAM; Representatives BAILEY, BARNHART, DEMBROW, FREDERICK, GALLEGOS, GARRETT, GOMBERG, GORSEK, GREENLICK, HOLVEY, KENY-GUYER, KOMP, KOTEK, MCKEOWN, NATHANSON, REARDON, TOMEL, WITT

CHAPTER

AN ACT

Relating to documents issued by the Department of Transportation; creating new provisions; amending ORS 366.505, 367.173, 367.605, 802.110, 802.160, 802.200, 807.130, 807.140 and 807.375; and limiting expenditures.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 5 of this 2013 Act are added to and made a part of the Oregon Vehicle Code.

SECTION 2. (1) Except as provided in this section, for the purposes of the Oregon Vehicle Code a driver card is subject to the same statutes and procedures that govern driver licenses and driver permits and shall be issued, renewed or replaced in the same manner as driver licenses or driver permits.

(2) The Department of Transportation shall issue, renew or replace a driver card without requiring a person to provide proof of legal presence in the United States if the person meets the requirements described in subsection (3) of this section.

(3) A person is eligible for a driver card under this section if the person:

(a) Complies with all of the requirements for the type of driving privileges sought to be issued, other than the requirement to provide proof of legal presence in the United States;

(b) Provides proof of identity and date of birth by submitting:

(A) An unexpired valid passport from the person's country of citizenship;

(B) An unexpired valid consular identification document issued by the consulate of the person's country of citizenship, if the department determines that the procedure used in issuing the consular identification document is sufficient to prove the person's identity; or

(C) Such other valid documentation, as defined by the department by rule;

(c) Provides proof of residency in this state in excess of one year as of the date of application;

(d) Provides the Social Security number assigned to the person by the United States Social Security Administration or provides a written statement that the person has not been assigned a Social Security number; and

(e) Pays the fees required under section 5 of this 2013 Act.

RECEIVED
2013 MAY 8 PM 1:53
KATE BROWN
SECRETARY OF THE STATE

(4) The department may issue, renew or replace a driver card for an applicant who has submitted a Social Security number only after the department verifies the Social Security number with the United States Social Security Administration.

(5) A person may prove residency in this state in excess of one year by:

(a) Providing evidence that the person owns or leases property in Oregon for use as a personal domicile by the person;

(b) Providing evidence that the person filed a full-year resident or part-year resident Oregon tax return for the most recent tax year; or

(c) Demonstrating such other factors adopted by the department by rule.

(6) Notwithstanding ORS 807.130 and 807.150, upon issuance and renewal:

(a) A driver card issued under this section that is subject to the same requirements and issued in the same manner as a driver license expires on the anniversary of the licensee's birthday in the fourth calendar year after the date of issuance.

(b) A driver card issued under this section that is subject to the same requirements and issued in the same manner as a driver permit is valid for the period of time for which a driver permit of the same type is issued by the department, but no longer than a period of four years.

(7) The department may not issue a commercial driver license to a person who holds a driver card issued under this section.

(8) The department shall adopt any rules the department considers necessary for the administration of this section.

SECTION 3. A driver card issued, renewed or replaced under section 2 of this 2013 Act must contain:

(1) The words "driver card" and may not contain the words "driver license" or "driver permit."

(2) A feature distinguishing the driver card from a driver license and driver permit. The form of the distinguishing feature shall be determined by the department by rule.

SECTION 4. A driver card issued, renewed or replaced under section 2 of this 2013 Act may be used only:

(1) To provide evidence of a grant of driving privileges.

(2) In the same manner as provided for driver licenses in ORS 97.951 to 97.982 for the purpose of identifying the person as an anatomical donor.

(3) To identify the person as an emancipated minor.

(4) To identify the person as a veteran.

(5) To provide a driver license number as required under ORS 18.042, 18.170 and 25.020.

(6) To provide a driver license number to aid a law enforcement agency in identifying a missing person under ORS 146.181.

SECTION 5. The following are the fees relating to the issuance, replacement and renewal of driver cards:

(1) Driver card issuance fee for a Class C driver card issued under section 2 of this 2013 Act, \$64.

(2) Fee to take the knowledge test for a Class C driver card issued under section 2 of this 2013 Act, \$5.

(3) Fee to take the skills test for a Class C driver card issued under section 2 of this 2013 Act, \$9.

(4) Driver card issuance fee for a restricted Class C driver card issued under section 2 of this 2013 Act, \$64.

(5) Driver card renewal fee for a Class C driver card issued under section 2 of this 2013 Act, \$44.

(6) Replacement fee for a driver card issued under section 2 of this 2013 Act, \$30.

(7) Student Driver Training Fund eligibility fee for a driver card issued under section 2 of this 2013 Act, \$6.

- (8) Fee for reinstatement of revoked driving privileges under ORS 809.390, \$75.
- (9) Fee for reinstatement of suspended driving privileges under ORS 809.380, \$75.
- (10) Fee for reinstatement of right to apply for driving privileges after a delay under ORS 809.280 (10) (1997 Edition), the same as the fee for reinstatement of suspended driving privileges.

SECTION 6. ORS 807.310 is amended to read:

807.310. (1) The Department of Transportation shall provide for the issuance of applicant temporary driver permits in a manner consistent with this section.

(2) The department may issue an applicant temporary driver permit to an applicant for a driver license or for a driver permit while the department is determining all facts relative to application for the driver license or driver permit. The department shall set forth on the applicant temporary driver permit the driving privileges granted under the permit.

(3) The holder of an applicant temporary driver permit must have the temporary driver permit on the holder's person while operating a motor vehicle. The holder of an applicant temporary driver permit must operate within the driving privileges granted under the temporary driver permit.

(4) **Except as provided in subsection (5) of this section**, an applicant temporary driver permit is valid for a period of 30 days from the date issued. The department may extend the term of the permit for sufficient cause. An extension of the term of the permit may not exceed an additional 30 days.

(5) An applicant temporary driver permit is valid for a period of 90 days from the date issued if an applicant:

(a) Has complied with all the requirements for an application for a driver license or driver permit, except that the applicant is unable to produce the documentation required by the department under ORS 807.021 and 807.730[*the department, at the time of application, may issue to the applicant an applicant temporary driver permit as provided in this section if the applicant;* and

(b) Certifies that the applicant is, to the best of the applicant's knowledge, legally present in the United States.

(6) [An applicant temporary driver permit issued to an applicant under subsection (5) of this section is valid for a period of 90 days from the date issued.] The department may extend the term of [the permit] **an applicant temporary driver permit under subsection (5) of this section** up to two times for sufficient cause. Each extension of the term of the permit may not exceed 90 days.

(7) Notwithstanding subsection (6) of this section, the department may, in the manner provided by rule, further extend the term of the applicant temporary driver permit **under subsection (5) of this section** for an applicant who needs additional time to obtain the documentation required under ORS 807.021 and 807.730.

(8) An applicant temporary driver permit automatically becomes invalid if the applicant's license or permit is issued or refused for good cause.

(9) The department may not charge a fee for issuance of an applicant temporary driver permit under this section.

SECTION 7. ORS 807.130 is amended to read:

807.130. (1) A license that is issued as an original license and not as a license that is renewed expires on the anniversary of the licensee's birthday in the eighth calendar year after the year of issuance.

(2) A license that is renewed under ORS 807.150 expires eight years from the specified expiration date of the immediately preceding license.

(3) Notwithstanding subsections (1) and (2) of this section, a **limited term driver license** that is issued **under ORS 807.730** to a person who is not a citizen or permanent legal resident of the United States expires on the date the licensee is no longer authorized to stay in the United States, as indicated by the documentation the person presented to the Department of Transportation to provide proof of legal presence in the United States as required by ORS 807.021 and 807.730, but no longer than eight years from the date of issuance or, if there is no definite end to the authorized stay, after a period of one year.

(4) A license that has expired does not grant driving privileges and is not valid evidence of driving privileges.

SECTION 8. ORS 366.505 is amended to read:

366.505. (1) The State Highway Fund shall consist of:

(a) All moneys and revenues derived under and by virtue of the sale of bonds, the sale of which is authorized by law and the proceeds thereof to be dedicated to highway purposes.

(b) All moneys and revenues accruing from the licensing of motor vehicles, operators and chauffeurs.

(c) Moneys and revenues derived from any tax levied upon gasoline, distillate, liberty fuel or other volatile and inflammable liquid fuels, except moneys and revenues described in ORS 184.642 (2)(a) that become part of the Department of Transportation Operating Fund.

(d) Moneys and revenues derived from or made available by the federal government for road construction, maintenance or betterment purposes.

(e) All moneys derived from the issuance of driver cards.

[(e)] **(f)** All moneys and revenues received from all other sources which by law are allocated or dedicated for highway purposes.

(2) The highway fund shall be deemed and held as a trust fund, separate and distinct from the General Fund, and may be used only for the purposes authorized by law and is continually appropriated for such purposes.

(3) Moneys in the State Highway Fund may be invested as provided in ORS 293.701 to 293.820. All interest earnings on any of the funds designated in subsection (1) of this section shall be placed to the credit of the highway fund.

SECTION 9. ORS 367.173 is amended to read:

367.173. The principal, interest, premium, if any, and the purchase or tender price of the grant anticipation revenue bonds issued under ORS 367.161 to 367.181 are payable solely from the following moneys:

(1) Federal transportation funds.

(2) To the extent affirmatively pledged at the time issuance of revenue bonds is authorized, the following moneys that are lawfully available:

(a) Moneys deposited in the State Highway Fund established under ORS 366.505.

(b) Except as provided in paragraph (c) of this subsection, moneys, once deposited in the State Highway Fund established under ORS 366.505, from the following sources may be affirmatively pledged:

(A) Moneys from the taxes and fees on motor carriers imposed under ORS 825.474 and 825.480.

(B) Moneys from the tax on motor vehicle fuel imposed under ORS 319.020.

(C) Moneys from the tax on fuel used in motor vehicles imposed under ORS 319.530.

(D) Moneys described under ORS 803.090 from the titling of vehicles.

(E) Moneys described under ORS 803.420 from the registration of vehicles.

(F) Moneys described under ORS 807.370 relating to the issuance of driver licenses and driver permits.

(G) Moneys described under section 5 of this 2013 Act relating to issuance of driver cards.

[(G)] **(H)** Moneys received by the Department of Transportation from taxes, fees or charges imposed after January 1, 2001, or other revenues or moneys received by the department from sources not listed in subparagraphs (A) to [(F)] **(G)** of this paragraph that are lawfully available to be pledged under this section.

(c) Moneys described in paragraph (b) of this subsection do not include:

(A) Moneys provided for appropriations to counties under ORS 366.762 to 366.768.

(B) Moneys provided for appropriations to cities under ORS 366.785 to 366.820.

(C) Moneys in the account established under ORS 366.512 for parks and recreation.

SECTION 10. ORS 367.605 is amended to read:

367.605. (1) Moneys deposited in the State Highway Fund established under ORS 366.505 are pledged to payment of Highway User Tax Bonds issued under ORS 367.615.

(2) Except as provided in subsection (3) of this section, moneys, once deposited in the highway fund from the following sources are subject to the use or pledge described in subsection (1) of this section:

- (a) Moneys from the taxes and fees on motor carriers imposed under ORS 825.474 and 825.480.
- (b) Moneys from the tax on motor vehicle fuel imposed under ORS 319.020.
- (c) Moneys from the tax on fuel used in motor vehicles imposed under ORS 319.530.
- (d) Moneys described under ORS 803.090 from the titling of vehicles.
- (e) Moneys described under ORS 803.420 from the registration of vehicles.
- (f) Moneys described under ORS 807.370 relating to the issuance of driver licenses and driver permits.

(g) Moneys described under section 5 of this 2013 Act relating to the issuance of driver cards.

~~[(g)]~~ **(h)** Moneys received by the Department of Transportation from taxes, fees or charges imposed after January 1, 2001, or other revenues received by the department from sources not listed in paragraphs (a) to ~~[(f)]~~ **(g)** of this subsection that are available for the use or pledge described by this section.

(3) Moneys described under subsection (2) of this section do not include:

- (a) Moneys provided for appropriations to counties under ORS 366.762 to 366.768.
- (b) Moneys provided for appropriations to cities under ORS 366.785 to 366.820.
- (c) Moneys in the account established under ORS 366.512 for parks and recreation.
- (4) To the extent affirmatively pledged, moneys from the following sources are subject to the use or pledge described in subsection (1) of this section:

- (a) Moneys received by the Department of Transportation from the United States government.
- (b) Any other moneys legally available to the department.
- (5) Notwithstanding ORS 366.507, the lien or charge of any pledge of moneys securing bonds issued under ORS 367.615 is superior or prior to any other lien or charge and to any law of the state requiring the department to spend moneys for specified highway purposes.

SECTION 11. ORS 802.110 is amended to read:

802.110. Any procedures the Department of Transportation establishes for financial administration of those functions of the department dealing with driver and motor vehicle services and for the disposition and payment of moneys it receives from the provision of driver and motor vehicle services shall comply with all of the following:

(1) The department shall deposit all moneys it receives related to driver and motor vehicle services in the Department of Transportation Driver and Motor Vehicle Suspense Account for approved expenses and disbursements before payment of general administrative expenses of the department related to the provision of driver and motor vehicle services. Notwithstanding this subsection, the department may return a bank check or money order when received in incorrect or incomplete form or when not accompanied by the proper application.

(2) The department shall pay the following approved expenses and disbursements from the Department of Transportation Driver and Motor Vehicle Suspense Account before payment of the general administrative expenses of the department related to driver and motor vehicle services:

(a) Refunds authorized by any statute administered by the department when such refunds are approved by the department.

(b) Amounts transferred to the State Treasurer under ORS 319.410 (2) for the purpose of carrying out the state aviation laws, amounts transferred to the Boating Safety, Law Enforcement and Facility Account by ORS 319.415, amounts transferred to the State Aviation Account by ORS 319.417 and amounts transferred to the Department of Transportation Operating Fund by ORS 184.643.

(c) After deduction of expenses of collection, transfer and administration, the department shall pay moneys collected from the Student Driver Training Fund eligibility fee under ORS 807.040, 807.150 and 807.370 and **section 5 of this 2013 Act** to the State Treasurer for deposit in the Student Driver Training Fund. The moneys deposited in the Student Driver Training Fund under this paragraph are continuously appropriated to the department for the following purposes:

(A) To the extent of not more than 10 percent of the amount transferred into the Student Driver Training Fund in any biennium, to pay the expenses of administering ORS 336.795, 336.800, 336.805, 336.810 (2) and 336.815.

(B) The remaining moneys, for reimbursing school districts and commercial driver training schools as provided under ORS 336.805.

(d) After deduction of expenses of collection, transfer and administration, the department shall pay moneys collected for the Motorcycle Safety Subaccount under ORS 807.170 to the State Treasurer for deposit in the Motorcycle Safety Subaccount of the Transportation Safety Account. Moneys paid to the State Treasurer under this paragraph shall be used for the purpose of ORS 802.320.

(e) After deduction of expenses for the administration of the issuance of customized registration plates under ORS 805.240, the department shall place moneys received from the sale of customized registration plates in the Passenger Rail Transportation Account. The moneys placed in the account are continuously appropriated to the department and shall be used for the payment of expenses incurred in administering passenger rail programs.

(f) After deduction of expenses of collection, transfer and administration, the department shall pay moneys from any registration fees established by the governing bodies of counties or a district, as defined in ORS 801.237, under ORS 801.041 or 801.042 to the appropriate counties or districts. The department shall make the payments on at least a monthly basis unless another basis is established by the intergovernmental agreements required by ORS 801.041 and 801.042 between the department and the governing bodies of a county or a district.

(g) After deducting the expenses of the department in collecting and transferring the moneys, the department shall make disbursements and payments of moneys collected for or dedicated to any other purpose or fund except the State Highway Fund, including but not limited to, payments to the Department of Transportation Operating Fund established by ORS 184.642 (1) and (2).

(3) The department shall refund from the Department of Transportation Driver and Motor Vehicle Suspense Account any excess or erroneous payment to a person who made the payment or to the person's legal representative when the department determines that money has been received by it in excess of the amount legally due and payable or that it has received money in which it has no legal interest. Refunds payable under this subsection are continuously appropriated for such purposes in the manner for payment of refunds under this section. If the department determines that a refund is due, the department may refund the amount of excess or erroneous payment without a claim being filed. Except as provided in ORS 319.290, 319.375, 319.820 and 319.831, any claim for a refund from the department must be filed within 12 months after the date payment is received by the department.

(4) After payment of those expenses and disbursements approved for payment before general administrative expenses related to the provision of driver and motor vehicle services, the department shall pay from the Department of Transportation Driver and Motor Vehicle Services Administrative Account its general administrative expenses incurred in the administration of any law related to driver and motor vehicle services that the department is charged with administering and any other expenses the department is permitted by law to pay from moneys held by the department before transfer of the moneys to the State Highway Fund. The following limitations apply to payments of administrative expenses under this subsection:

(a) The department shall make payment of the expenses of administering the issuance of winter recreation parking permits under ORS 811.595 from those moneys received from issuing the permits.

(b) The department shall pay its expenses for administering the registration and titling of snowmobiles under ORS 821.060 and 821.100 from the fees collected from administering those sections. The department shall also pay its expenses for the administration of the snowmobile driver permit program under ORS 821.160 from the moneys otherwise described in this paragraph.

(c) The department shall pay its expenses for determining the amount of money to be withheld under ORS 802.120 from the fees collected for administering the registration and titling of snowmobiles. The amount used to pay expenses under this paragraph shall be such sum as necessary but shall not exceed \$10,000 during each biennium.

(d) The department shall retain not more than \$15,000 in any biennium for the expenses of collecting and transferring moneys to the Student Driver Training Fund under this section and for the administration of ORS 336.810 (3).

(5) Except as otherwise provided in this subsection, the department shall transfer to the State Highway Fund the moneys not used for payment of the general administrative expenses or for approved expenses and disbursements before payment of general administrative expenses. The following apply to this subsection:

(a) If the Director of Transportation certifies the amount of principal or interest of highway bonds due on any particular date, the department may make available for the payment of such interest or principal any sums that may be necessary to the extent of moneys on hand available for the State Highway Fund regardless of the dates otherwise specified under this section.

(b) Notwithstanding paragraph (a) of this subsection the department shall not make available for purposes described in paragraph (a) of this subsection any moneys described in ORS 367.605 when there are not sufficient amounts of such moneys in the State Highway Fund for purposes of bonds issued under ORS 367.615.

(6) Notwithstanding any other provision of this section, the following moneys shall be transferred to the State Highway Fund at the times described:

(a) Moneys received under ORS 802.120 and not used for the payment of administrative expenses of the department shall be transferred before July 31 of each year.

(b) Moneys received from the registration of snowmobiles that is not to be used for payment of administrative expenses of the department shall be transferred within 30 days after the end of the quarter.

(c) Moneys received from the issuance of winter recreation parking permits that is not used for payment of administrative expenses of the department shall be transferred within 30 days after the end of the quarter.

(7) The following moneys transferred to the State Highway Fund under this section may be used only for the purposes described as follows:

(a) Moneys collected from the issuance of winter recreation parking permits, and the interest on such moneys, shall be used to enforce the requirement for winter recreation parking permits and to remove snow from winter recreation parking locations designated under ORS 810.170. Any remaining moneys shall, upon approval by the Winter Recreation Advisory Committee:

(A) Be used to maintain parking locations developed with moneys obtained under ORS 810.170 and snowmobile facilities that are parking lots developed with moneys as provided under this section;

(B) Be used to develop additional winter recreation parking locations under ORS 810.170; or

(C) Be carried over to be used in subsequent years for the purposes and in the manner described in this paragraph.

(b) Moneys received from the registration of snowmobiles or under ORS 802.120 may be used for development and maintenance of multiuse trails within urban growth boundaries described in ORS 367.017 or for the development and maintenance of snowmobile facilities, including the acquisition of land therefor by any means other than the exercise of eminent domain. Moneys received under ORS 802.120 may also be used for the enforcement of ORS 811.590, 821.100 to 821.120, 821.140, 821.150, 821.190, 821.210 and 821.240 to 821.290.

(8) The department shall maintain the Revolving Account for Emergency Cash Advances separate from other moneys described in this section. From the account, the department may pay for the taking up of dishonored remittances returned by banks or the State Treasurer and for emergency cash advances to be subsequently reimbursed. The account shall be used only as a revolving fund. The department shall at all times be accountable for the amount of the account, either in cash or unreimbursed items and advances. The moneys in the account are continuously appropriated for the purposes of this subsection. The amount of the account under this subsection shall not exceed \$40,000 from moneys received by the department in the performance of its driver and motor vehicle services functions and moneys otherwise appropriated for purposes of this subsection. The account

under this subsection shall be kept on deposit with the State Treasurer. The State Treasurer is authorized to honor and pay all properly signed and indorsed checks or warrants drawn against the account.

SECTION 12. ORS 802.160 is amended to read:

802.160. The fees collected under ORS 807.370 and section 5 of this 2013 Act for the reinstatement of suspended and revoked driving privileges shall be applied by the Department of Transportation to the cost of preparing and serving notices of suspension or revocation and to the cost of administering the driver improvement program authorized under ORS 809.480.

SECTION 13. ORS 807.375 is amended to read:

807.375. (1) In addition to any fee imposed under ORS 807.370 and 807.410 or section 5 of this 2013 Act, the Department of Transportation may impose a fee for each driver license, driver permit, driver card and identification card that is issued, renewed or replaced, for the purpose of covering the costs of purchasing equipment and establishing and maintaining a database used for collecting and verifying biometric data.

(2) A fee imposed under this section may not be more than \$3 per driver license, driver permit, driver card or identification card.

SECTION 14. ORS 802.200 is amended to read:

802.200. In addition to any other records the Department of Transportation may establish, the department is subject to the following provisions concerning records:

(1) The department shall maintain records concerning the titling of vehicles in this state. The records under this subsection shall include the following:

(a) For vehicles issued a title by this state, the records shall identify the vehicle and contain the following:

(A) The name of the vehicle owner and any security interest holders in order of priority, except that a security interest holder need not be identified if the debtor who granted the interest is in the business of selling vehicles and the vehicles constitute inventory held for sale;

(B) The name of any lessor of the vehicle;

(C) The vehicle description; and

(D) Whether a certificate of title was issued for the vehicle.

(b) If the vehicle is an antique vehicle that is reconstructed, the records shall indicate that the vehicle is reconstructed.

(c) If the vehicle is a replica, the records shall indicate that the vehicle is a replica.

(d) Any other information concerning the titling of vehicles that the department considers convenient or appropriate.

(e) All odometer readings for a vehicle that are reported to the department under provisions of the vehicle code.

(f) If the vehicle has been reported to the department as a totaled vehicle under the provisions of ORS 819.012 or 819.014, the records shall indicate that the vehicle is a totaled vehicle unless the reason for the report was theft and the vehicle has been recovered.

(2) If a vehicle that has been registered or titled in another jurisdiction is registered or titled in this state, the department shall retain a record of any odometer readings shown on the title or registration documents submitted to the department at the time of registration or title.

(3) Except as otherwise provided in ORS 826.003, the department shall maintain records concerning the registration of vehicles required to be registered by the department. The records concerning the registration of vehicles may be stored along with records concerning the titling of vehicles. The records under this subsection shall include the following:

(a) For vehicles registered by the department, the records shall identify the vehicle and contain the following:

(A) The registration plate number assigned by the department to the vehicle;

(B) The name of the vehicle owner;

(C) The vehicle description and vehicle identification number; and

(D) An indication that the vehicle is a totaled vehicle if it has been reported to the department as a totaled vehicle under the provisions of ORS 819.012 or 819.014, unless the reason for the report was theft and the vehicle has been recovered.

(b) Any other information concerning the registration of vehicles that the department considers convenient or appropriate.

(4) The department shall maintain separate records for the regulation of vehicle dealers. The records required under this subsection shall include the following information about persons issued dealer certificates:

(a) The person's application for a vehicle dealer certificate.

(b) An alphabetical index of the name of each person applying for a vehicle dealer certificate.

(c) A numerical index according to the distinctive number assigned to each vehicle dealer.

(5) The department shall maintain a file on vehicles for which the title record is canceled under ORS 819.030. The records required under this subsection shall disclose the last registered owner of each vehicle, any security interest holder or holders and lessors of each vehicle as shown by the canceled title record for each vehicle and the make and year model for each vehicle.

(6) The department shall maintain a record of each agreement or declaration under ORS 802.500 and 802.520.

(7) The department shall maintain separate and comprehensive records of all transactions affecting the Revolving Account for Emergency Cash Advances described under ORS 802.100.

(8) The department shall maintain suitable records of driver licenses, driver permits, **driver cards** and identification cards. The records required under this subsection shall include all of the following:

(a) An index by name and number.

(b) Supporting documentation of all driver licenses, driver permits, **driver cards** or identification cards issued.

(c) Every application for a driver license; driver permit, **driver card** or identification card.

(d) All driver licenses *[or]*, driver permits or **driver cards** that have been suspended or revoked.

(e) **Except as provided in paragraph (f) of this subsection**, for each driver license, driver permit or identification card, the Social Security number of the person to whom the driver license, driver permit or identification card is issued or proof that the person is not eligible for a Social Security number.

(f) **For each driver card, the Social Security number of the person to whom the driver card is issued or a written statement that the person has not been assigned a Social Security number.**

~~[(f)]~~ (g) For each commercial driver license, the Social Security number of the person to whom the license is issued, or any other number or identifying information that the Secretary of the United States Department of Transportation determines appropriate to identify the person.

(9) The Department of Transportation shall maintain a two-part driving record consisting of an employment driving record and a nonemployment driving record for each person as required under this subsection. All of the following apply to the records required under this subsection:

(a) The department shall maintain driving records on:

(A) Every person who is granted driving privileges under a driver license, driver permit, **driver card** or a statutory grant of driving privileges under ORS 807.020;

(B) Every person whose driving privileges have been suspended, revoked or canceled under this vehicle code;

(C) Every person who has filed an accident report under ORS 811.725 or 811.730; and

(D) Every person who is required to provide future responsibility filings under ORS 806.200, 806.220, 806.230 or 806.240.

(b) In addition to other information required by this paragraph, the employment driving record shall include all reports of drug test results that are made to the department under ORS 825.410. Notwithstanding any other provision of law, release of the portion of the employment driving record that shows drug test results reported under ORS 825.410 is permitted only in accordance with ORS

802.202. The employment driving record shall also include all motor vehicle accidents that the person is required to report under ORS 811.720, all suspensions of driving privileges required to be placed on the record under ORS 809.280, all suspensions of the person's commercial driver license that result from operation or use of a commercial motor vehicle and all convictions of the person for violation of motor vehicle laws except convictions for offenses requiring mandatory revocation or suspension of driving privileges under ORS 809.409, 809.411, 809.413 and 813.400, but shall include only such accidents, suspensions and convictions that occur while the person is driving a motor vehicle:

(A) In the course of the person's employment when the person is employed by another for the principal purpose of driving a motor vehicle;

(B) Carrying persons or property for compensation;

(C) In the course of the person's employment in the collection, transportation or delivery of mail if the vehicle is government owned or marked for the collection, transportation or delivery of mail in accordance with government rules;

(D) That is an authorized emergency vehicle;

(E) That is a commercial motor vehicle; or

(F) In the course of the person's employment with a federal, state or local government in a public works project involving repair or maintenance of water, sewer or road systems.

(c) The nonemployment driving record shall include the person's:

(A) Motor vehicle accidents that the person is required to report under ORS 811.720, other than the motor vehicle accidents that are included on the person's employment driving record;

(B) Suspensions, cancellations and revocations of licenses, permits and driving privileges;

(C) Convictions for violation of the motor vehicle laws other than those included in the employment driving record including, for each violation of ORS 811.100 or 811.111, the speed at which the person was convicted of traveling and the posted speed, the speed limit or the speed that constitutes prima facie evidence of violation of the basic speed rule, as appropriate; and

(D) Diversion agreements entered into under ORS 813.220 within the preceding 15 years.

(d) The department may record other entries to indicate correspondence, interviews, participation in driver improvement programs or other matters concerning the status of the driving privileges of the person.

(e) When a person from another jurisdiction applies for a driver license or driver permit issued by this state, the department shall request a copy of the person's driving record from the other jurisdiction. At the time the person is issued a license in Oregon, the record from the other jurisdiction shall become part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance. The department by rule may specify methods for converting entries from out-of-state records for use in Oregon.

(f) When a suspension of a driver permit, driver license or other driving privilege is placed on the driving record under ORS 809.280 for failure to appear in court on a traffic crime, the department shall note on the record that the suspension was for failure to appear in court and shall also note the offense charged against the person on which the person failed to appear.

(g) The Department of Transportation, in consultation with the Department of State Police, shall devise and implement a method of noting suspensions and revocations of driving privileges on the record in such a way that police agencies can determine directly from the record what class of offense, as provided by law, is committed by a person who drives in violation of the suspension or revocation. If the Department of Transportation and the Department of State Police devise a mutually agreeable alternative method of informing police agencies of the nature of a suspension or revocation and the consequences of its violation, the implementation of that method shall satisfy the duty of the Department of Transportation under this paragraph.

(10) The Department of Transportation shall maintain records of judgments or convictions sent to the department under ORS 810.375.

(11) The department shall maintain accident reports filed with the department under ORS 810.460 and 811.725 to 811.735.

(12) The department shall maintain records of bank checks or money orders returned under ORS 802.110.

(13) The department shall maintain records of trip permits issued by the department under ORS 803.600, as provided under this subsection. The records required by this subsection shall include the following:

- (a) A description of the vehicle sufficient to identify the vehicle.
- (b) The person to whom the permit was issued.
- (c) When the permit was issued.
- (d) The type of permit issued.
- (e) For registration weight trip permits, the maximum allowable registration weight permitted for operation under the permit.
- (f) Any other information the department determines appropriate or convenient.

SECTION 15. Notwithstanding any other law limiting expenditures, the amount of \$4,708,505 is established for the biennium beginning July 1, 2013, as the maximum limit for payment of expenses for the purpose of carrying out section 2 of this 2013 Act from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the Department of Transportation under section 5 of this 2013 Act.

Passed by Senate April 23, 2013

11 Robert Taylor, Secretary of Senate

Peter Courtney, President of Senate

Passed by House April 30, 2013

Tina Kotek, Speaker of House

Received by Governor:

4:00 p. M., April 30, 2013

Approved:

11:40 a. M., May 1, 2013

John Kitzhaber, Governor

Filed in Office of Secretary of State:

M., 2013

Kate Brown, Secretary of State

ELLEN F. ROSENBLUM
Attorney General



MARY H. WILLIAMS
Deputy Attorney General

DEPARTMENT OF JUSTICE
APPELLATE DIVISION

November 4, 2013

Gina Zejdlik
Acting Director, Elections Division
Office of the Secretary of State
141 State Capitol
Salem, OR 97310

Re: Proposed Referendum — Provides Driver Card Showing Driving Privileges of Eligible
Oregon Resident Without Proof of Legal Presence
DOJ File #137098ARF0003-13; Elections Division #301

Dear Ms. Zejdlik:

We have prepared and hereby provide to you a draft ballot title for the above-referenced prospective referendum. The proposed referendum relates to driver cards for Oregon residents who do not have proof of legal presence in the United States, if they otherwise meet the requirements for a driver license.

Written comments from the public are due to you within ten business days after your receipt of this draft title. A copy of all written comments provided to you should be forwarded to this office immediately thereafter.

A copy of the draft ballot title is enclosed.

Sincerely,

Cameron Craft
Legal Secretary

chc/4755302

Enclosure

RECEIVED
2013 NOV 4 AM 2 46
KATE BROWN
SECRETARY OF THE STATE

DRAFT BALLOT TITLE

Provides driver card showing driving privileges of eligible Oregon resident without proof of legal presence

Result of "Yes" Vote: "Yes" vote approves 2013 law directing Department of Transportation to issue driver card to Oregon resident, equivalent to driver license, without proof of legal presence.

Result of "No" Vote: "No" vote rejects law enacted in 2013 directing Department of Transportation to issue driver card showing resident's driving privileges without requiring proof of legal presence.

Summary: The 2013 Legislative Assembly enacted a law directing Department of Transportation to create and to issue a driver card to an applicant who does not provide proof of legal presence in the United States, but who has otherwise complied with all Oregon requirements for the type of driving privileges sought, has provided proof that the person has resided in Oregon for more than one year, and has provided proof of identity and date of birth. This measure refers that 2013 act to voters for approval or rejection. Measure outlines eligibility requirements for this driver card. Measure specifies features that must appear on this driver card. Specifies ways in which this driver card may be used as identification. Specifies fees for this driver card. Other provisions.

RECEIVED
2013 NOV 4 PM 2 46
KATE BROWN
SECRETARY OF THE STATE

STOLL BERNE

STOLL STOLL BERNE LOKTING & SHLACHTER P.C. LAWYERS

Steven C. Berman
sberman@stollberne.com

November 19, 2013

VIA FACSIMILEKate Brown
Secretary of State
Elections Division
255 Capital Street NE, Suite 501
Salem, OR 97310RECEIVED
2013 NOV 19 PM 2 22
KATE BROWN
SECRETARY OF THE STATERe: Draft Ballot Title for Referendum No. 301 for the General Election of
November 4, 2014

Dear Secretary Brown:

I represent Arthur Towers, Political Director for SEIU Local 503, regarding the ballot title for Referendum No. 301 for the general election of November 4, 2014 ("the Referendum"). Mr. Towers is an elector in the State of Oregon. This letter is written in response to your office's press release, dated November 4, 2013, which invites comments on the draft ballot title for the Referendum.

I. An Overview of Referendum No. 301

The Referendum is on Senate Bill 833 (2013). SB 833 creates limited purpose, limited duration driver cards for individuals who provide proof of identity, age, Oregon residency and are otherwise eligible to drive in Oregon. SB 833 was approved by a bipartisan majority of both houses of the Oregon legislature and signed by the Governor on May 1, 2013. Despite a well-financed and well-publicized signature collection campaign, the Referendum qualified for the ballot by only 157 signatures.

SB 833 contains 15 sections. Section 1 makes sections 2 through 5 part of the Oregon Vehicle Code. Section 2 provides that driver cards are subject to the same statutes and procedures that govern driver licenses. SB 833, § 2(1). The Oregon Department of Transportation ("ODOT") is required to issue driver cards to a person who: (a) complies with the requirements of the driving privileges sought; (b) provides proof of identity and birth; (c) provides proof of residency in Oregon for at least one year prior to application for the driver card; (d) provides a social security number or a statement that the person has not received a social security number; and (e) pays certain fees. SB 833, §§2(2)-(3). SB 833 provides that only certain documents are sufficient to establish the person's identity, age and Oregon residency. *Id.*

(SBSLS Main Documents\8221\005\00425949-1)

Kate Brown
November 19, 2013
Page 2

The driver card is valid for four years. *Id.* at §2(6)(a). A holder of a driver card may not receive a commercial driver license. *Id.* at §2(7). ODOT has authority to adopt additional rules as necessary to administer SB 833. *Id.* at §2(8).

Section 3 provides that the phrase “driver card” must appear on the driver card, and that the phrases “driver license” or “driver permit” may not appear on the driver card. The driver card must contain a feature distinguishing it from a driver license. SB 833, §3(2).

Section 4 provides that a driver card may be used only for six delineated purposes. Section 5 establishes fees relating to the issuance, replacement and renewal of driver cards.

Sections 6 through 14 amend various provisions of the Oregon Vehicle Code to include references to driver cards. Section 15 caps expenditures for the purposes of carrying out SB 833.

II. The Draft Ballot Title for the Referendum Does Not Comply with the Statutory Requirements.

A. The Caption

ORS 250.035(2)(a) provides that a ballot title must contain a “caption of not more than 15 words that reasonably identifies the subject matter of the state measure.” The caption must “state or describe the proposed measure’s subject matter accurately and in terms that will not confuse or mislead potential petition signers and voters.” *Lavey v. Kroger*, 350 Or 559, 563 (2011) (citations omitted; internal quotation marks omitted). The “subject matter” of a referendum is its “actual major effect.” *Id.* (citation omitted; internal quotation marks omitted). The “actual major effect” is the change or changes “the measure would enact in the context of existing law.” *Rasmussen v. Kroger*, 350 Or 281, 285 (2011). A caption that is underinclusive, because it fails to inform voters of all the major effects of an initiative, is statutorily noncompliant. *Towers v. Myers*, 341 Or 357, 362 (2006). *See also id.* at 361 (“[w]hen the Attorney General chooses to describe the subject matter of a proposed measure by listing some of its effects, he runs the risk that the caption will be underinclusive and thus inaccurate”).

The caption in the draft ballot title provides:

Provides driver card showing driving privileges of eligible Oregon resident without proof of legal presence

Mr. Towers respectfully submits that the caption is flawed and must be revised. First, the phrase “without proof of legal presence” is confusing, vague and inaccurate. “Presence” is defined as “the fact or condition of being present: the state of being in one place and not elsewhere.” *Webster’s Third New Int’l Dictionary* 1793 (unabridged ed 2002). From the caption in the draft ballot title, a voter reasonably could conclude that SB 833 would allow an applicant to obtain a driver card, even though the driver cannot establish that he is in Oregon or, more existentially, that he even legally exists. However, SB 833 explicitly requires that an applicant provide “proof of residency in this state in excess of one year as of the date of application.” SB

Kate Brown
November 19, 2013
Page 3

833, §2(3)(c). SB 833 also mandates that an applicant provide valid proof of his identity and date of birth. *Id.* at §2(3)(b). “Without proof of legal presence” is inaccurate, and wrong.

The caption is underinclusive. The Attorney General has chosen to emphasize one aspect of SB 833 – that an applicant may obtain a driver card “without proof of legal presence” – without setting forth the requirements an applicant must meet to obtain a driver card. For example, SB 833 provides that a driver card recipient comply “with all the requirements” to be allowed to drive in Oregon. SB 833, §2(3)(a). In other words, an applicant for a driver card must pass written, vision and driving tests before he can obtain a driver card, and meet other legal requirements. ORS 807.070(1)-(3). A driver card holder using Oregon’s roads must be insured. ORS 806.010. The applicant must pay a fee to obtain the card. SB 833, §5. As was discussed above, an applicant must provide valid proof of identity, age and Oregon residence. Yet the caption emphasizes only what an applicant need not do to obtain a card (provide “proof of legal presence”) and fails to emphasize what an applicant must do to obtain the card.

The phrase “showing driving privileges” also is underinclusive. Although the driver card under SB 833 has only six permissible uses, those uses are not restricted to “showing driving privileges.” The driver card also may be used to establish that the holder: is an anatomical donor, an emancipated minor or a veteran. SB 833, §§4(2)-(4). The driver card number may be used as identification for a judgment document in a civil action, a lien record abstract, a formal record of a support payment, or for identifying a missing person. SB 833, §§4(5)-(6). The caption misstates the limited purposes for which a driver card may be used.

The caption also is misleading, because it overstates the effects of SB 833. *See, e.g., Caruthers v. Myers*, 344 Or 596, 604 (2008) (ballot title failed to “communicate the measure’s more limited effect”). The caption does not inform voters of the limited scope and duration of the driver card. For example, a driver card recipient cannot obtain a commercial driver license. SB 833, §2(7). A driver card must be renewed every four years. SB 833 §2(6)(a). A driver card may be used only for the six specified purposes discussed above. SB 833, §4. Yet, from the draft caption, voters are not informed of the limited, restrictive nature of the driver card.

A caption that complies with the statutory requirements would provide:

Establishes limited purpose, duration driver card for individuals who prove Oregon residency, meet driving requirements

B. The Results Statements

ORS 250.035(2)(b)&(c) require that a ballot title contain “simple and understandable statement[s] of not more than 25 words that describ[e] the result if the state measure is” approved or rejected.

Kate Brown
November 19, 2013
Page 4

The results statements in the draft ballot title provide:

"Yes" vote approves 2013 law directing Department of Transportation to issue driver card to Oregon resident, equivalent to driver license, without proof of legal presence.

"No" vote rejects law enacted in 2013 directing Department of Transportation to issue driver card showing resident's driving privileges without requiring proof of legal presence.

The result of yes statement is flawed for the reasons set forth above. The result of yes statement is flawed for two additional reasons. First, the phrase "equivalent to driver license" is inaccurate. "Equivalent" is defined, as relevant, as "corresponding or virtually identical esp. in effect or function." *Webster's* at 769. The driver card under SB 833 is not the same as a driver license under Oregon law. A driver card is valid for four years, whereas a driver license is valid for eight years. ORS 807.130. A driver card applicant cannot obtain a commercial driver card, and a driver card holder cannot obtain a commercial driver license. The fees to obtain and renew a driver card are substantially higher than the fees to obtain and renew a driver license. Compare SB 833, §5 (setting forth fees to obtain and renew a driver card) with ORS 807.370 (setting forth the fees to obtain and renew a driver license). A driver card must look different than a driver license, must contain the words "driver card" and may not contain the words "driver license." SB 833, §3. A driver card may be used for only six specific purposes; the Oregon Vehicle Code places no similar restrictions on driver licenses. A driver card issued pursuant to SB 833 is distinct from, not "equivalent to," a driver license.

The result of yes statement is flawed for the additional reason that it contains the phrase "approves 2013 law." That language explains the procedural posture of the Referendum, but it does not explain the result – the change in law – if the Referendum is approved. Moreover, "approves 2013 law" is confusing. Voters reasonably could understand from the phrase "approves 2013 law" that the Referendum is only an advisory vote or opinion from the electorate. Voters would be further confused, because similar language has *not* been included in the ballot titles for prior statewide referenda. Accordingly, voters could be misled into believing that the Referendum is somehow procedurally distinct from prior referenda that they have considered. A "simple and understandable statement" would inform voters of the impact of a yes vote – the change that would occur – without delving into the procedural mechanism that forced this statewide referendum.

The result of no statement also is statutorily noncompliant. It reiterates the flaws in the caption regarding the substance of SB 833. The result of no statement also contains confusing and misleading language – "rejects law enacted in 2013" – regarding the procedural posture of the Referendum.

Kate Brown
November 19, 2013
Page 5

Results statements that comply with the statutory requirements would provide:

"Yes" vote establishes limited purpose, duration driver cards, issued only to applicants with valid identification, who prove Oregon residency, pass drivers tests, pay card fees.

"No" vote rejects issuing limited purpose, limited duration driver cards to applicants with valid identification, who prove Oregon residency, pass drivers tests, pay card fees.

C. The Summary

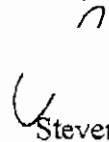
ORS 250.035(2)(d) requires that the ballot title contain a "concise and impartial statement of not more than 125 words summarizing the state measure and its major effect." The summary should be revised for the reasons set forth above.

III. CONCLUSION

The caption, results statements and summary for the draft ballot title for the Referendum do not meet the requirements of ORS 250.035(2) and must be revised.

Thank you for your consideration of these comments. Please notify me immediately when a certified ballot title is issued.

Very truly yours,


Steven C. Berman

SCB:jjjs
cc: client



Suite 2300
1300 SW Fifth Avenue
Portland, OR 97201-5630

Gregory A. Chaimov
503.778.5328 tel
503.778.5299 fax

gregorychaimov@dwt.com

November 19, 2013

VIA FACSIMILE – 503-373-7414

Elections Division
Office of the Secretary of State
255 Capitol St NE, Ste 501
Salem, OR 97310

Re: Public Comment on Proposed 2014 RP 301

Dear Secretary Brown:

On behalf of Rebecca Straus and David Fidanque, registered Oregon voters, we are providing the following comments on the draft ballot title.

The Secretary of State issued the following Draft Ballot Title on November 4, 2013:

Provides driver card showing driving privileges of eligible Oregon resident without proof of legal presence.

Result of "Yes" Vote: "Yes" vote approves 2013 law directing Department of Transportation to issue driver card to Oregon resident, equivalent to driver license, without proof of legal presence.

Result of "No" Vote: "No" vote rejects law enacted in 2013 directing Department of Transportation to issue driver card showing resident's driving privileges without requiring proof of legal presence.

Summary: The 2013 Legislative Assembly enacted a law directing Department of Transportation to create and to issue a driver card to an applicant who does not provide proof of legal presence in the United State, but who has otherwise complied with all Oregon requirements for the type of driving privileges sought,

DWT 22974214v1 0050062-082039

Anchorage
Bellevue
Los Angeles

New York
Portland
San Francisco

Seattle
Shanghai
Washington, D.C.

100%

www.dwt.com

RECEIVED
2013 NOV 19 PM 4 18
KATE BROWN
SECRETARY OF THE STATE

has provided proof that the person has resided in Oregon for more than one year, and has provided proof of identity and date of birth. This measure refers that 2013 act to voters for approval or rejection. Measure outlines eligibility requirements for this driver card. Measure specifies features that must appear on this driver card. Specifies ways in which this driver card may be used as identification. Specifies fees for this driver card. Other provisions.

COMMENTS ON DRAFT TITLE

As explained below in more detail, the draft Ballot Title does not satisfy the legal requirements of ORS 250.035 because the draft Ballot Title describes the qualifications for a driver card in terms of the qualifications an applicant need not meet instead of the qualifications an applicant must meet. The draft Ballot Title contrasts *some* of the qualifications for a driver card with *some* of the qualifications for a driver license instead of explaining to voters how an individual may obtain a driver card and to what uses the individual may put the driver card. Even where the draft Ballot Title provides information about the qualifications for and uses of a driver card, the draft Ballot Title provides information that is too general to be of benefit to voters.

CAPTION

The draft caption provides:

**Provides driver card showing driving privileges of eligible
Oregon resident without proof of legal presence.**

ORS 250.035(2)(a) provides that the ballot title caption must contain "not more than 15 words that reasonably identif[y] the subject matter of the state measure." The caption is the "cornerstone for the other portions of the ballot title." *Greene v. Kulongoski*, 322 Or 169, 175, 903 P2d 366 (1995). As the "headline" for the ballot title, the caption "provides the context for the reader's consideration of the other information in the ballot title." 322 Or at 175. A caption complies substantially with the requirements of ORS 250.035(2)(a) if the caption identifies the subject matter of the proposed measure in terms that will not confuse or mislead * * * voters. 322 Or at 174-75.

The "subject matter" of a measure, as that term is used in ORS 250.035(2)(a), must be determined with reference to the "significant changes" that would be brought about by the measure. *Phillips v. Myers*, 325 Or 221, 226 (1997).

The draft caption suffers from two specific problems that then flow through other sections of the draft title.

First, the primary purpose of the Vehicle Code is to “provide maximum safety for all persons who travel or otherwise use the public highways of this state[.]” ORS 802.020 (11). Laws that govern the granting of driving privileges fulfill this purpose by ensuring that each individual who is granted the privilege has demonstrated the knowledge and skills to safely operate a motor vehicle by: (1) passing a written test demonstrating the person’s knowledge of the rules of the road in Oregon; (2) passing a vision test; and (3) passing a road test that demonstrates the individual’s practical ability to drive on Oregon roads. ORS 807.040.

For an individual to obtain a driver card, the individual must meet all of these safety-related qualifications. Instead of noting the safety requirements that driver-card applicants must meet, the draft caption focuses on one requirement that the applicant might not possess. To comply with ORS 250.035(2)(a), the caption should inform voters of the eligibility criteria for a driver card as opposed to highlighting the documents or elements that are not required for eligibility. Naturally, there is an endless amount of information that is not required of driver-card applicants (marital status, employment information, education history, and on and on); listing those nonrequired disclosures in the caption does not serve to inform voters of how the measure would change Oregon law. The highlighting of lack of lawful presence might be appropriate if the measure proposed to remove that qualification for a driver license, but the measure does not amend ORS 807.040. For this reason, it is unnecessary and potentially under-inclusive to include reference to proof of lawful presence in the caption.

In a related vein, to say that a driver card is available to “eligible” applicants does not provide helpful information without, at the same time, providing at least the basic eligibility requirements: Oregon residency and proof of identity. For any privilege the state confers, there are some eligibility requirements; therefore, to refer to “eligible” applicants does not add to voters’ understanding of the measure. *See Baker v. Keisling*, 312 Or 385, 400 (1991) (Van Hoomissen, J., dissenting: “all” is an inappropriate “surplus word”).

Second, the draft caption fails to comply with ORS 250.035(2)(a) by failing to inform voters of the narrow terms and function of the driver card. Among the significant and unique characteristics of the driver card are a limited duration of four years, SB 833, §2(6)(a), (b), and limited, enumerated uses for the card, SB 833, §4. Driving privileges are only one of several permitted and limited uses of a driver card. Although demonstrating that the card-holder has met the knowledge, skills and capacity requirements for safe driving is the most important purpose of the card, it is important to, at a minimum, alert voters that uses to which the driver card may be put are limited. Describing only one use—“show[ing] driving privileges” — provides incomplete and, therefore, misleading information to voters. A ballot title that provides insufficiently detailed information does not comply with ORS 250.035. *See Girod v. Kroger*,

351 Or 389, 398 (2011) (caption insufficient when describing that “measure would change unspecified ‘fishing methods/procedures’”).

We suggest addressing these issues as follows:

**Creates limited purpose, duration driver card for applicants
who demonstrate safe driving, Oregon residence, identity**

RESULT OF “YES” VOTE

“ORS 250.035(2)(b) and (c) require ‘simple understandable’ statements of not more than 25 words that describe the result if voters approve the proposed measure and if they reject it.” *Wyant/Nichols v. Myers*, 336 Or 128, 138 (2003). The purpose of this section of the ballot title is to “notify petition signers and voters of the result or results of enactment that would have the greatest importance to the people of Oregon.” *Novick v. Myers*, 337 Or 568, 574 (2004). The yes statement builds upon the caption. *Hamilton v. Myers*, 326 Or 44, 51 (1997).

The draft yes statement reads as follows:

Result of “Yes” Vote: “Yes” vote approves 2013 law directing Department of Transportation to issue driver card to Oregon resident, equivalent to driver license, without proof of legal presence.

The yes statement carries forward the problems of the caption and is deficient in an additional way: the driver card is not “equivalent to” a driver license. “Equivalent” means “equal in force or amount” or “like in signification or import.” Merriam-Webster’s dictionary defines “equivalent” as “equal in force, amount, or value,” but the driver card is not “equal in force * * * or value” to a driver license. Section 3 of SB 833 provides that the driver card may not say that the card is a license and requires a feature to distinguish the card from a license. Section 4 of SB 833 limits the uses to which a driver card may be put. Section 2 specifies that the driver card shall be valid for a period of four years, half as long as a driver license.

In addition, a valid Oregon driver license may be used as proof of identity for federal official purposes under the REAL ID Act of 2005, such as passing through security at an airport and for entering a federal building. The application process for issuance or renewal of an Oregon driver license includes the option of also registering to vote or updating an existing registration (*see* ORS 247.012(1)(c)). A valid Oregon driver license, permit or identification card may also be used to establish the signature of an individual who registers to vote electronically pursuant to ORS 247.019. Section 4 of SB 833 provides that the driver card may not be used for those purposes. Staff Measure Summary, SB 833-A, Senate Committee on Business and

Transportation (April 15, 2013) ("A driver card would not be usable for identification purposes except to designate that the individual is an organ donor, an emancipated minor, a veteran, or to establish identity for civil proceedings or missing person investigations.").

One way to address the concerns raised about the yes statement is:

Result of "Yes" Vote: "Yes" vote approves limited purpose, limited duration driver card for applicants who demonstrate safe driving, prove Oregon residency, identity and birthdate.

RESULT OF "NO" VOTE

The Attorney General issued the following draft no statement:

Result of "No" Vote: "No" vote rejects law enacted in 2013 directing Department of Transportation to issue driver card showing resident's driving privileges without requiring proof of legal presence.

ORS 250.035(2)(c) requires the no statement to "us[e] the same terms" as the yes statement "to the extent practical." ORS 250.035(3) reinforces the requirement by requiring that the no and yes statements "be written so that, to the extent practicable, the language of the two statements is parallel."

The result of the no statement carries forward the problems of the result of the yes statement. To mirror the suggested yes statement, we propose:

Result of "No" Vote: "No" vote rejects 2013 law to create limited purpose, limited duration driver card for applicants who demonstrate safe driving, prove Oregon residency, identity and birth date.

SUMMARY

The Attorney General issued the following draft Summary:

Summary: The 2013 Legislative Assembly enacted a law directing Department of Transportation to create and to issue a driver card to an applicant who does not provide proof of legal presence in the United States, but who has otherwise complied with all Oregon requirements for the type of driving privileges sought, has provided proof that the person has resided in Oregon

for more than one year, and has provided proof of identity and date of birth. This measure refers that 2013 act to voters for approval or rejection. Measure outlines eligibility requirements for this driver card. Measure specifies features that must appear on this driver card. Specifies ways in which this driver card may be used as identification. Specifies fees for this driver card. Other provisions.

The summary carries forward problems of the caption, yes statement, and no statement.

Also, the summary fails to adequately inform voters of the measure's major effects, as required by ORS 250.035(2)(d). The description of the measure is "too vague and gives voters no clear picture of what is at stake." *Hunnicuttt/Stacey v. Myers*, 343 Or 387, 391 (2007). In *Novick v. Myers*, 330 Or 351 (2000), for example, the proposed measure would have imposed different dollar limitations on campaign contributions by different classes of contributors. The certified ballot title, however, merely stated that the measure "limits certain campaign contributions." 330 Or at 354. The Supreme Court concluded that the caption failed to convey the crux of the measure, which was to create a system of different contribution limits for different classes of contributors: "The word 'certain' in the Attorney General's caption fails to identify that significant characteristic of the subject matter of the proposed measure." 330 Or at 356. The same is true here.

The following statements in the draft summary do not give voters enough information to determine the scope of the measure on which they will be voting:

- "[O]utlines eligibility requirements for this driver card.
- "[S]pecifies features that must appear on this driver card.
- "Specifies ways in which this driver card may be used as identification."

An alternative summary that might address some, if not all, of these concerns would read:

Summary: The 2013 Legislative Assembly enacted a law directing the Department of Transportation to create and issue a limited purpose, limited duration driver card to applicants who demonstrate the skills and knowledge for safe driving, can provide proof of residency in Oregon for more than one year, and provide proof of identity and date of birth. This measure refers that 2013

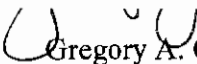
Elections Division
November 19, 2013
Page 7

Act to voters for approval or rejection. Driver card would be valid for only four years, instead of eight, and could not be used for identification for air travel, to enter a federal building, register to vote, or to obtain any other government benefit that requires proof of citizenship or lawful presence in the United States. Measure specifies fees for driver card. Other provisions.

Thank you for your consideration.

Very truly yours,

Davis Wright Tremaine LLP


Gregory A. Chaimov
On behalf of ACLU Foundation of Oregon

GAC/jan

Protect Oregon Driver Licenses
PO Box 7354 - Salem, OR 97303

November 19, 2013

Kate Brown
Secretary of State
Elections Division
255 Capital St. NE Ste. 501
Salem, OR 97310

Re: Draft ballot title and language for Referendum #301- Public Comment
DOJ File #137098ARF0003-13; Elections Division #301

Dear Secretary Brown,

As Authorized Agent for the Protect Oregon Driver Licenses referendum petition #301 approved for the November 2014 general election, I respectfully submit the following minor changes.

On behalf of Chief Petitioners Rep. Kim Thatcher, Rep. Sal Esquivel and Rick LaMountain, I thank you for your consideration of these suggestions.

Cynthia Kendoll
Authorized Agent – Protect Oregon Driver Licenses - Referendum #301
Home - 503.581.6485
PODL line - 503.435.0141

cc:
Rep. Thatcher
Rep. Esquivel
Rick LaMountain

RECEIVED
2013 NOV 19 PM 4 37
KATE BROWN
SECRETARY OF THE STATE

Requested Language

Provides Oregon driver card to those without proof of legal presence in the United States

Result of “Yes” Vote: “Yes” vote approves 2013 Act directing Department of Transportation to issue a driver card, equivalent to a driver license, to a person without proof of legal presence in the United States.

Result of “No” Vote: “No” vote rejects 2013 Act directing Department of Transportation to issue a driver card, equivalent to a driver license, to a person without proof of legal presence in the United States.

Summary: Current Oregon law requires any applicant for an Oregon driver’s license or permit to provide proof of legal presence in the United States by submitting valid documentation that the person is a citizen or permanent legal resident of the United States or is otherwise legally present in the United States in accordance with federal immigration laws.

In 2013, the Legislative Assembly passed an Act that directs the Department of Transportation to create and issue a “driver card” that grants driving privileges to an applicant who does not provide proof of legal presence in the United States. The Act outlines eligibility requirements for this driver card. The Act specifies features that must appear on this driver card. The Act specifies ways in which this driver card may be used as identification. The Act specifies fees for this driver card. Other provisions. Veto Referendum 301 refers that 2013 Act to voters for approval or rejection.

Rationale for Edits

Title

The title is clarified and simplified. We removed the reference to “Oregon resident” to be impartial and fair as the Act mentions several other requirements besides residency that are not mentioned in the title, including:

1. Proof of Identity;
2. Proof of SSN or affidavit that states have not been assigned a SSN;
3. Pays the required fee;
4. Complies with DL requirements other than proof of lawful presence in the U.S.

The phrase “in the United States” was inserted after the term “legal presence” for clarification and consistency. In the current Oregon driver’s license code, the phrase “in the United States” always follows any mention of the phrase “without proof of legal presence.” See ORS §§ 807.040, 807.021, 807.130, 807.400, and 807.730.

Submitted by: Protect Oregon Driver Licenses – November 19, 2013

RECEIVED
NOV 19 PM 4:07
KATE BROWN
SECRETARY OF THE STATE

Statements

The statements were both clarified and simplified. Both statements should mirror each other, one in the positive with a “yes” vote and one in the negative with a “no” vote.

The word “law” was replaced with the word “Act” as used in the Oregon Constitution regarding referenda. See Ore. Const. Art. IV, §§ 1(3) and 1(4).

We removed the reference to “Oregon resident” to be impartial and fair as the Act mentions several other requirements besides residency that are not mentioned in the title, including:

1. Proof of Identity;
2. Proof of SSN or affidavit that states have not been assigned a SSN;
3. Pays the required fee;
4. Complies with DL requirements other than proof of lawful presence in the U.S.

The phrase “in the United States” was inserted after the term “legal presence” for clarification and consistency. In the current Oregon driver’s license code, the phrase “in the United States” always follows any mention of the phrase “without proof of legal presence.” See ORS §§ 807.040, 807.021, 807.130, 807.400, and 807.730.

Summary

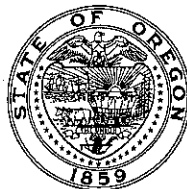
The summary was both clarified and simplified. The first sentence was added to provide context and inform the voter of the major effect of Senate Bill 833 as required by the Elections Division’s State Initiative and Referendum Manual, at 32 (2012).

The phrase “in the United States” was inserted after the term “legal presence” for clarification and consistency. In the current Oregon driver’s license code, the phrase “in the United States” always follows any mention of the phrase “without proof of legal presence.” See ORS §§ 807.040, 807.021, 807.130, 807.400, and 807.730.

The word “measure” was used interchangeably to refer to Veto Referendum 301 and Senate Bill 833. For clarification purposes, the word “Act” was substituted in reference to Senate Bill 833 and Veto Referendum 301 was substituted in reference to itself.

RECEIVED
2013 NOV 19 PM 4 37
KATE BROWN
SECRETARY OF THE STATE

Submitted by: Protect Oregon Driver Licenses – November 19, 2013



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

December 5, 2013

RECEIVED
2013 DEC 5 PM 4 00
KATE BROWN
SECRETARY OF THE STATE

Jim Williams
Director, Elections Division
Office of the Secretary of State
141 State Capitol
Salem, OR 97310

Re: Proposed Initiative Petition — Provides Oregon Resident "Driver Card" Without
Requiring Proof of Legal Presence in the United States
DOJ File # 137098ARF0003-13-13; Elections Division #301

Dear Mr. Williams:

We have received the comments submitted in response to the draft ballot title for the Referendum # 301 (2014). The comments were submitted by Steven C. Berman, on behalf of Arthur Towers; Gregory A. Chaimov, on behalf of Rebecca Straus and David Fidanque; and Cynthia Kendoll, on behalf of chief petitioners Rep. Kim Thatcher, Rep. Sal Esquivel and Rick LaMountain. We provide the enclosed certified ballot title.

This letter summarizes the comments we received, our response to those comments, and the reasons we made or declined to make the changes proposed by the commenters. This letter must be included in the record in the event the Oregon Supreme Court is asked to review this ballot title. ORAP 11.30(7).

A. The Draft Caption

The draft caption provides:

**Provides driver card showing driving privileges of eligible
Oregon resident without proof of legal presence**

Currently, Oregon law requires "proof of legal presence in the United States" and either a Social Security number or proof of ineligibility for a Social Security number as prerequisites to obtaining driving privileges from the state. ORS 807.021(1). The subject matter of the referendum measure—its major effect—is to establish a new "driver card" that proves the state has granted driving privileges to the card's holder without requiring the holder to prove legal presence in the United States.

Commenter Towers

Commenter Towers submits that the phrase “without proof of legal presence” is confusing and inaccurate and could mislead voters to conclude the applicant need not provide proof of residency in Oregon. We agree with Towers that “without proof of legal presence” could be confusing to voters.

Towers’s comment that the applicant must provide proof of identity and date of birth is correct, but we have found it impossible to include all of the eligibility requirements within the word limits for a ballot title caption.

Towers comments that the phrase “showing driving privileges” is “underinclusive,” because the driver card can be used for other purposes, such as showing the holder is an anatomical donor, an emancipated minor, a veteran, and as identification for specified purposes. The purpose of the caption is not to identify every use to which the card could be put. Nor must the caption inform voters the duration of the driver card or what the driver card cannot be used for, as Towers suggests. The major effect of the law, as stated, is to provide a mechanism for the state to grant driving privileges without requiring proof of legal presence in the United States.

Commenters Straus and Fidanque

Commenters Straus and Fidanque identify two purported flaws in the draft caption. First, they assert that the caption must inform voters that driver card applicants must meet “safety-related qualifications.” We disagree, because all persons requesting driving privileges must meet safety-related requirements. The subject matter of the measure is whether certain otherwise qualified Oregon residents may be afforded driving privileges without proof of legal presence in the United States.

Straus and Fidanque contend that the caption must tell voters “at least the basic eligibility requirements,” or else “eligible” is a “surplus word.” We have eliminated “eligible” from the certified caption.

These commenters also assert that the draft caption fails to inform voters of “the narrow terms and function of the driver card”—in particular, the card’s limited duration of four years and its “limited, enumerated uses.” We disagree that the duration of the card and the restrictions on its use are essential aspects of the measure’s subject matter, which is to authorize a grant of driving privileges without requiring proof of legal presence in the United States.

Commenters Rep. Thatcher, Rep. Esquivel, and LaMountain

These commenters object to the caption’s reference to “Oregon resident,” because in-state residency is only one of the several requirements for obtaining a driver card. Those “other requirements” include proof of identity, proof of a social security number or that a social security has not been assigned, payment of a fee, and compliance with other requirements for obtaining a

driver license. The commenters would retain the reference to an "Oregon" driver card, but omit the reference to an "Oregon resident."

We disagree with the commenters' suggestion, because Oregon residency is not like paying a fee, passing a driving test, or proving identity. The measure makes driver cards available only to persons who have lived in Oregon "in excess of one year as of the date of application." Thus, only certain categories of persons are even eligible to apply for a driver card. Oregon driver cards will not be available to anyone who has not lived in Oregon for more than a year. That is a significant part of the subject matter of the measure, because one-year residence in Oregon is a significant limitation on the expanded availability of driving privileges established by the measure.

These commenters also suggest adding "in the United States" after "legal presence." As the commenters point out, other statutes use "in the United States" after the phrase "without proof of legal presence." Therefore, we have added that information to the certified caption, which provides:

**Provides Oregon resident "driver card" without
requiring proof of legal presence in United States**

B. The Result Statements

The draft "yes" result statement provides:

Result of "Yes" Vote: "Yes" vote approves 2013 law directing Department of Transportation to issue driver card to Oregon resident, equivalent to driver license, without proof of legal presence.

The draft "no" result statement provides:

Result of "No" Vote: "No" vote rejects law enacted in 2013 directing Department of Transportation to issue driver card showing resident's driving privileges without requiring proof of legal presence.

Commenter Towers

Commenter Towers objects to the "yes" result statements for the reasons he objects to the caption. As discussed above, we do not accept the commenter's suggested changes. In addition, Towers comments that the phrase "equivalent to driver license" is inaccurate. We agree, and we have deleted that phrase in the certified "yes" result statement.

Towers next objects to the phrase "approves 2013 law" on the ground that the phrase "explains the procedural posture of the Referendum" rather than "the change in law" if the measure is approved. We agree, and we have modified the result statements accordingly.

Commenters Straus and Fidanque

These commenters also object that a driver card is not "equivalent to" a driver license, and we agree.

Commenters Rep. Thatcher, Rep. Esquivel, and LaMountain

These commenters renew their suggestion to add "in the United States" after "without legal presence." We have adopted that suggestion in the certified result statements. They renew their objection to "Oregon resident," which we decline to change for the reasons stated above.

We certify the following results statements:

Result of "Yes" Vote: "Yes" vote directs Department of Transportation to issue "driver card" to Oregon resident meeting specified eligibility, without requiring proof of legal presence in United States.

Result of "No" vote: "No" vote rejects law directing Department of Transportation to issue driver card to eligible Oregon resident without requiring proof of legal presence in United States.

C. The Summary

The draft summary provides:

Summary: The 2013 Legislative Assembly enacted a law directing Department of Transportation to create and to issue a driver card to an applicant who does not provide proof of legal presence in the United States, but who has otherwise complied with all Oregon requirements for the type of driving privileges sought, has provided proof that the person has resided in Oregon for more than one year, and has provided proof of identity and date of birth. This measure refers that 2013 act to voters for approval or rejection. Measure outlines eligibility requirements for this driver card. Measure specifies features that must appear on this driver card. Specifies ways in which this driver card may be used as identification. Specifies fees for this driver card. Other provisions.

Commenter Towers

Commenter Towers asserts that the summary contains the flaws he noted in the caption and result statements. Our response to his comments is explained above.

Commenters Straus and Fidanque

These commenters renew the objections they made to the caption and result statements, which are addressed above. In addition, they assert that the summary fails to adequately inform voters of the measure's major effects. Specifically, they assert the summary fails to tell voters

December 5, 2013

Page 5

the scope of the eligibility requirements for the driver card, the specified features that must appear on the card, and the specified ways in which the card may be used for identification. The commenters suggest an alternative summary that includes more specifics about the driver card's use and requirements for obtaining a driver card.

We have already determined that references in the ballot title to the 2013 law passed by the legislature are unnecessary. Omitting that language from the summary leaves more words for informing voters of the measure's details, in response to the commenters' objections.

Commenters Rep. Thatcher, Rep. Esquivel, and LaMountain

We again adopt the commenters' suggestion to add "in [the] United States" after "proof of legal presence." Because we have deleted references to the 2013 legislation, we need not address the commenters' suggestions about those references. The commenters also suggest adding an opening sentence "to provide context and inform the voter of the major effect of" the measure. We agree that such a sentence would be helpful to voters.

We certify the following summary:

Summary: Current law requires any applicant for an Oregon driver license or permit to provide proof of legal presence in the United States. Measure directs the Department of Transportation to issue a "driver card" to an applicant who does not provide proof of legal presence in the United States, but who has otherwise complied with all Oregon requirements for the type of driving privileges sought, has provided proof of residence in Oregon for more than one year, and has provided proof of identity and date of birth. The driver card may not be used as identification for air travel, to enter a federal building, to register to vote or to obtain any government benefit requiring proof of citizenship or lawful presence in United States. Other provisions.

As modified, we certify the ballot title.

Sincerely,

Denise G. Fjordbeck
Attorney-in-Charge
Civil/Administrative Appeals
denise.fjordbeck@doj.state.or.us

DGF:chc/4831698

Enclosure

Richard F. LaMountain

Kim Thatcher

Sal Esquivel

Portland, OR 97229

Keizer, OR 97303

Medford, OR 97504

December 5, 2013

Page 6

Steven C. Berman
Stoll Berne
209 SW Oak St. Ste. 500
Portland, OR 97204

Gregory A. Chaimov
Davis Wright Tremaine LLP
1300 SW 5th Ave. Ste. 2400
Portland, OR 97201

Cynthia Kendoll
Authorized Agent
P.O. Box 7354
Salem, OR 97303

BALLOT TITLE

**Provides Oregon resident "driver card" without
requiring proof of legal presence in the United States**

Result of "Yes" Vote: "Yes" vote directs Department of Transportation to issue "driver card" to Oregon resident meeting specified eligibility, without requiring proof of legal presence in United States.

Result of "No" Vote: "No" vote rejects law directing Department of Transportation to issue "driver card" to eligible Oregon resident without requiring proof of legal presence in United States.

Summary: Current law requires any applicant for an Oregon driver license or permit to provide proof of legal presence in the United States. Measure directs the Department of Transportation to issue a "driver card" to an applicant who does not provide proof of legal presence in the United States, but who has otherwise complied with all Oregon requirements for the type of driving privileges sought, has provided proof of residence in Oregon for more than one year, and has provided proof of identity and date of birth. The driver card may not be used as identification for air travel, to enter a federal building, to register to vote or to obtain any government benefit requiring proof of citizenship or lawful presence in United States. Other provisions.

SECRETARY OF THE STATE
KATE BROWN

2013 DEC 5 PM 4 00

RECEIVED

NOTICE OF FILING AND PROOF OF SERVICE

I certify that on January 17, 2014, I directed the original Respondent's Answering Memorandum to Petitions to Review Ballot Title Re: Referendum Petition #301 (Supreme Court) to be electronically filed with the Appellate Court Administrator, Appellate Records Section, and upon Gregory A. Chaimov, attorney for David Fidanque and Rebecca Straus, and Steven C. Berman, attorney for Arthur Towers, and served Eric C. Winters, attorney for Sal Esquivel, Richard LaMountain, and Kim Thatcher, by using the court's electronic filing system.

I further certify that on January 17, 2014, I directed the Respondent's Answering Memorandum to Petitions to Review Ballot Title Re: Referendum Petition #301 (Supreme Court) to be served upon chief petitioners Richard F. LaMountain, Kim Thatcher, and Sal Esquivel, by mailing a copy, with postage prepaid, in an envelope addressed to:

ard F. LaMountain
NW 143rd Ave. #4
and, OR 97229

Thatcher
Chemawa Rd. NE
er, OR 97303

l Esquivel
Corning Ct.
edford, OR 97504

/s/ Judy C. Lucas

JUDY C. LUCAS #903285
Senior Assistant Attorney General
judy.lucas@doj.state.or.us
Attorney for Respondent
Ellen Rosenblum, Attorney General,
State of Oregon