

IN THE SUPREME COURT OF THE	)	SC S_____
STATE OF OREGON	)	
	)	
KIM THATCHER, SAL ESQUIVEL,	)	
RICHARD LAMOUNTAIN,	)	
Petitioners,	)	<b>ORAL ARGUMENT REQUESTED</b>
	)	
v.	)	
	)	
ELLEN ROSENBLUM, Attorney General,	)	
	)	
Respondent.		

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**PETITION TO REVIEW BALLOT TITLE CERTIFIED BY THE ATTORNEY GENERAL  
(REFERENDUM #301 (2014))**

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The Attorney General certified the Ballot Title for Referendum #301 on December 5, 2013. The Chief Petitioners are Representative Kim Thatcher, Representative Sal Esquivel and Richard LaMountain. Petitioners timely submitted comments on the Draft Ballot Title for Referendum #301. Kim Thatcher, Sal Esquivel, and Richard LaMountain are Petitioners in this action.

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*\*pro hac vice pending*

## **STANDING**

Petitioners Kim Thatcher, Sal Esquivel, and Richard LaMountain (“Petitioners”) are Oregon electors dissatisfied with the Certified Ballot Title for Referendum #301 (“Ref. #301”). The full text of the Ballot Title, as certified to and filed with the Secretary of State, in addition to the Attorney General’s supporting memorandum, is Attached as Exhibit A.<sup>1</sup> Petitioners timely submitted written comments objecting to the Draft Ballot Title for Ref. #301 with the Secretary of State on November 19, 2013 pursuant to ORS 250.067(1) (Attached as Exhibit C).

The subject of this instant Petition to Review relates to new language the Attorney General inserted into the Summary of the Ballot Title after the end of the administrative comment period. Because the language the Petitioners object to was inserted after the expiration of the administrative comment period, Petitioners are entitled to raise these objections for the first time before this Court. *Carley v. Myers*, 340 Or. 222, 232, 132 P.3d 651, 656 (2006).

## **OBJECTION**

The Summary does not comply with the requirements of ORS 250.035(2)(d) because it (1) does not pertain to an identified, actual effect of enacting the measure, (2) uses misleading, politically charged phrases, and (3) speculates about the possible effects of a proposed measure.

## **ARGUMENTS AND AUTHORITIES**

When reviewing a certified ballot title, this Court must decide whether the Attorney General’s certified ballot title is in “substantial compliance” with the statutory requirements. *Huss v. Kulongoski*, 323 Or. 266, 269, 917 P.2d 1018 (1996); *McCormick v. Kroger*, 347 Ore. 293, 300, 220 P.3d 412 (2009).

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<sup>1</sup> The Act which is subject to Referendum #301 is Senate Bill 833. The Enrolled version of SB 833 is attached as Exhibit B.

**I. The Ballot Title Summary Does Not Comply with ORS § 250.035(2)(d)**

ORS § 250.035(2)(d) requires a summary of not more than 125 words be “concise and impartial” and summarize “the state measure and its major effect.” “The function of the summary is ‘to provide voters with enough information to understand what will happen if the measure is approved.’” *Girod v. Kroger*, 351 Ore. 389, 399, 268 P.3d 562 (2011) (quoting *Caruthers v. Kroger*, 347 Ore. 660, 670, 227 P.3d 723 (2010)). “That information may include a description of the effect of the measure at issue on other laws, so long as the description is accurate.” *Girod*, 351 Ore. at 399 (quoting *Berman v. Kroger*, 347 Ore. 509, 514, 225 P.3d 32 (2009)). “In all events, the information must pertain to an identified, actual ‘effect’ of enacting the measure; it is not permissible to ‘speculate about the *possible* effects of a proposed measure.’” *Girod*, 351 Ore. at 399-400 (quoting *Pelikan/Tauman v. Myers*, 342 Ore. 383, 389, 153 P.3d 117 (2007) (emphasis in original); see also *Kain v. Myers* (S49089), 333 Ore. 446, 450-51, 41 P.3d 416 (2002) (ballot title need not mention “conditional and conjectural” effects of proposed measure)).

The Summary of the Ballot Title for Ref. #301 is not impartial and does not summarize the major effect of the measure. Particularly, it does not “pertain to an identified, actual ‘effect’ of enacting the measure.” *Girod*, 351 Ore. at 399-400. Instead, the Attorney General uses negative inferences from SB 833 to discuss driver card uses that may be, but are not expressly, prohibited by SB 833 and does so in a way that is partial and misleading to voters. The Summary 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 obtain any government benefit requiring proof of citizenship or lawful*

*presence in the United States.* Other provisions.

Ex. A (emphasis added).

Petitioners' contention with the Attorney General's Summary solely focuses on the emphasized sentence. This sentence does not address the Ref. #301's major effect, is not impartial, and is speculative as to Ref. #301's effects. ORS § 250.035(2)(d).

**A. The Summary Does Not Address the “Major Effect” of the Measure and Does not Advise Voters of the “Breadth” of Act, Leading to Voter Confusion**

First, the challenged sentence is problematic because it implies that the Act has only a limited list of *prohibited* uses, as opposed to a limited list of *permissible* uses. Section 4 of SB 833 contains an exclusive list of *permissible* uses for the driver card:

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.

Ex. B, p.1.

In contrast, SB 833 only contains *one* prohibited use. Section 2(7) prohibits a person who holds a driver card from being issued a “commercial driver license.” Ex. B, p. 2. That express prohibited use is not mentioned in the Summary certified by the Attorney General. By focusing on a few of the infinitely numerous prohibitions, the Summary gives voters the impression that a vote for Ref. #310 would *prohibit* certain, specific uses of the driver card, when in reality, a vote

for Ref. #310 only *permits* certain, specific uses of a driver card—in other words, the *prohibited* uses are extensive. The inclusion of the challenged sentence causes the Summary to fail to advise the voters of the “‘breadth’ of the measure’s impact.” *Carson v. Kroger*, 351 Ore. 508, 519, 270 P.3d 243 (2012) (*quoting Caruthers v. Kroger*, 347 Ore. 660, 670, 227 P.3d 723 (2010)). Its inclusion causes the Summary to not “pertain to an identified, actual effect of enacting the measure.” *Girod*, 351 Ore. 399-400 (emphasis and internal quotations omitted).

The text of SB 833 implies that *any* use of the driver card, other than one of the enumerated six uses, is impermissible. By focusing on four specific uses that were prohibited by implication while omitting the other, potentially infinite noncompliant uses, the Summary fails to address the “breadth” of the measure’s impact and fails to “pertain to an identified, actual effect of enacting the measure.” *Carson*, 351 Ore. at 519; *Girod*, 351 Ore. 399-400. Additionally, including of prohibited uses *not* found in SB 833 while simultaneously omitting the only expressly listed prohibited use, the Summary further misleads voters as to the breadth of the measure’s impact. Finally, the misleading nature of the Summary is exacerbated here, because while the text of SB 833 focuses on limited *permissible* uses, the Summary focuses on impliedly *prohibited* uses.

**B. The Summary is not Impartial Because it Attempts to Sway Voters By Focusing on “Politically Charged” Uses not Effected by Ref. #301**

Second, the Summary does not comply with ORS § 250.035(2)(d) because it is not “impartial.” An impartial summary should not use “politically charged” terms which could impermissibly sway voters. *See Carson v. Kroger*, 351 Ore. 508, 513, 270 P.3d 243 (2012) (an “impartial” ballot title should not include “politically charged phrases”); *see also Whitsett v. Kroger*, 348 Ore. 243, 253, 230 P.3d 545 (2010).

The limited non-statutory prohibited uses identified by the Attorney General are some of

the most highly charged political issues involving unlawfully present aliens. Many states have recently attempted to address the issue of non-citizens registering to vote and the Supreme Court has recently addressed it as well. *See e.g. Arizona v. Inter Tribal Council of Arizona, Inc.*, 113 S. Ct. 2247 (2013); *see also Kobach v. United States Election Assistance Comm'n*, 2013 U.S. Dist. LEXIS 173872 (D. Kan., Dec. 12, 2013). Air travel by unlawfully present aliens has been a politically charged topic since the 9/11 Commission identified numerous individuals who had committed immigration violations as hijackers in the attacks. *See generally 9/11 and Terrorist Travel: A Staff Report of the National Commission on Terrorist Attacks Upon the United States* (Aug. 21, 2004) available at [http://govinfo.library.unt.edu/911/staff\\_statements/911\\_TerrTrav\\_Monograph.pdf](http://govinfo.library.unt.edu/911/staff_statements/911_TerrTrav_Monograph.pdf). Similar concerns could be raised regarding entry into federal buildings. Finally, whether an alien can obtain government benefits has been a politically charged issue since California Proposition 187 in 1994. *See League of United Latin Am. Citizens v. Wilson*, 908 F. Supp. 755, 763 (D. Cal. 1995) (discussing and invalidating parts of Proposition 187); *League of United Latin Am. Citizens v. Wilson*, 997 F. Supp. 1244 (D. Cal. 1997). Benefits for unlawfully present aliens became so politically charged that Congress addressed it in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, 110 Stat. 2105, *codified at* 8 U.S.C. § 1601; *see e.g.* 8 U.S.C. §§ 1601(2)(B), (6), 1611, 1621.

Indeed, the only reason that these specific uses seem to have been included is because they relate to politically charged issues. An affirmance of Ref. #301 has *no effect* on any use of any Oregon-issued identification cards by the federal government. Presumably, the Summary identifies air travel, federal building entry, and public benefits because those are areas where federal law may apply. *See REAL ID Act of 2005*, §§ 201, 202, Div. B of Pub. L. 109-13, 119

Stat. 311-315 (2005) (*codified at* 49 U.S.C. § 30301 note) (minimum standards of state driver’s licenses for purposes of federal acceptance); 8 U.S.C. §§ 1611, 1621 (unlawfully present aliens ineligible for public benefits). However, Ref. #301 does not change whether federal law recognizes identification as valid. Therefore, prohibiting the use of these cards for air travel, entry into public buildings, and obtaining public benefits it is not a “major affect” of Ref. #301. It is the *federal law* that has that effect. Any person with a non-compliant identification card would be subject to these federal laws whether Ref. #301 is affirmed or rejected.

The fourth asserted prohibited use, registering to vote, is typically done in one of three ways—when applying for a driver’s license, in person, or by mail. 42 U.S.C. § 1973gg-2(a). Perhaps if Ref. #301 is approved, the State will create a separate application form for those seeking the driver card than those seeking a standard driver’s license application to prevent driver card holders from registering to vote. However SB 833 contains no express requirement. Thus, it is not a major effect of the Ref. #301 either.

Affirmance or rejection of Ref. #301 has no effect on the above described laws and therefore whether those separate laws prohibit the use of the driver card is not a “major effect” of Ref. #301. SB 833 does not include any of these prohibited uses. Instead, the prohibited uses serve only to impermissibly sway voters, by focusing on some of the most politically charged issues surrounding unlawful immigration.

### **C. The Summary Speculates About Possible Effects of the Measure**

Third, the sentence is problematic because it impermissibly “speculate[s] about the possible effects of [the] proposed measure.” *Girod*, 351 Ore. at 399-400 (*quoting Pelikan/Tauman v. Myers*, 342 Ore. 383, 389, 153 P.3d 117 (2007) (emphasis in original)).

Petitioners believe that SB 833 provides an exhaustive list of permissible uses of the driver card. *See infra* at (I)(B). However, by listing some non-statutory prohibited uses in the Summary, the Attorney General may argue that the Section 4 permissible use list is not exhaustive. If the Attorney General takes that position, the sentence must be modified because the asserted prohibited uses are speculative.

The asserted effects of Ref. #301 are not based in the text of SB 833. Instead, they are negative inferences made by the Attorney General, presumably by relying on other federal laws. *See supra*. If Petitioners' assumption is correct, the Attorney General's reliance on these laws is improperly speculative because the laws relied upon by the Attorney General could be amended at any time—either before or after the election—wholly separate from Ref. #301 which would effectively invalidate the challenged sentence. For example, Oregon could pass a law that “affirmatively provides” that unlawfully present aliens may receive public benefits. *See* 8 U.S.C. § 1621(d). Nothing in SB 833 prohibits those persons from then using the driver card to obtain those benefits if such a law passed.<sup>2</sup> Similarly, federal law could be amended to permit air travel and entry into federal buildings with identifications that are not REAL ID compliant. The federal government, not Oregon, decides whether certain identification cards are acceptable for these uses; SB 833 binds only Oregon officials. Finally, SB 833 does not specify how the State will process driver's license and driver card applications to prevent voter registration using these cards. That is a process that *might* be developed some time later, independent of the operation of SB 833.

Fundamentally, the Attorney General is implying that approval of Ref. #301 would prohibit certain uses of the driver card. In reality, other laws have those asserted effects. The

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<sup>2</sup> Assuming the permissible use list is not exhaustive.



speculative nature of the “effects” of Ref. #301 further warrants modification of the Summary.

### **Conclusion**

Ref #301 has one “major effect”—to permit a person to obtain an Oregon driver card without proving legal presence in the United States. Ex. B, Section 2(2). Section 2(1) confirms this “major effect” by stating that the driver card “is subject to the same statutes and procedures that govern driver licenses and driver permits[.]” *Id.* An ORS § 250.035(2)(d) compliant Summary would exclude the challenged sentence entirely and read:

**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. Other provisions.

At the very least, the sentence should be modified to read, “The driver card may be used only for the enumerated purposes listed in the Act.” Under either modification, the “major effect” of the law is stated and what remains would pertain to an actual effect of the measure. The Summary, as drafted by the Attorney General, does neither and leaves voters with an incorrect impression of the operation of Ref. #301.

DATED this 19th day of December, 2013.

Respectfully Submitted,

*Eric Winters*

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Eric Winters, OSB #98379  
Attorney for Petitioners

## CERTIFICATE OF FILING AND SERVICE

I certify that on December 19, 2013, I filed this **Petition to Review Ballot Title Certified by the Attorney General** by electronic filing with the State Court Administrator at this address: <https://appellate-efile.ojd.state.or.us/filing/>

I also certify that on November 19, 2013, I served the forgoing **Petition to Review Ballot Title Certified by the Attorney General** upon:

Hon. Ellen F. Rosenblum  
Attorney General of the State of Oregon  
Office of the Solicitor General  
400 Justice Building  
1162 Court St., NE  
Salem, OR 97301

Respondent

Hon. Kate Brown  
Secretary of State  
Elections Division  
255 Capitol Street NE, Suite 501  
Salem, OR 97310-0722

by sending a copy thereof, contained in a sealed envelope, addressed to said attorneys, with correct postage attached thereon via first class mail.

DATED this 19th day of December, 2013,  
*Eric Winters*

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Eric C. Winters, Attorney for Petitioners

**EXHIBIT A**

OFFICE OF THE SECRETARY OF STATE

KATE BROWN  
SECRETARY OF STATE



ELECTIONS DIVISION

JIM WILLIAMS  
Director

255 ORION STREET NW, Suite 505  
SANTA CLARA, CA 95050-9722

(509) 586-1518

For Immediate Release:  
December 5, 2013

Contact: Lydia Plutchi  
Elections Division  
(509) 986-1518

The Office of the Secretary of State received a certified ballot title from the Attorney General on December 5, 2013, for referendum petition #301, proposing a statutory amendment, for the General Election of November 4, 2014.

The certified ballot title is as follows:

**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.

Chief Petitioner(s): Richard F. LaMountain, 1900 NW 143rd Ave. Apt. A, Portland, OR 97229, Kim Thatcher, 1724 Chemawa Rd. NE, Kelzer, OR 97303 and Sal Esquivel, 11 Coming Ct., Medford, OR 97504.

Copies of the text of this Initiative are available at [www.oregonvotes.gov](http://www.oregonvotes.gov).

There now follows an appeal period of 10 business days. Any elector dissatisfied with the ballot title certified by the Attorney General, who also submitted in a timely manner written comments which addressed the specific legal standards a ballot title must meet, may petition the Supreme Court for a different title. The appeal period ends at 5:00 p.m. on December 19, 2013. The appeal procedures are outlined in ORS 250.065.

# # #

ELLEN F. ROSENBLUM  
Attorney General



DEPARTMENT OF JUSTICE  
APPELLATE DIVISION

December 5, 2013

MARY H. WILLIAMS  
Deputy Attorney General

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

Mr. 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 # 137098ARP0003-13-13; 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. Betzman, on behalf of Arthur Towers; Gregory A. Chaimov, on behalf of Rebecca Straus and David Fidanque; and Cynthia Kendall, 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.

1162 Court Street NE, Salem, OR 97301-4096  
Telephone: (503) 378-4402 Fax: (503) 378-6306 TTY: (800) 735-2900 www.doj.state.or.us

#### **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. Thielker, Rep. Esquivel, and LeMountain**

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.

Three 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.



December 5, 2013  
Page 4

**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.

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DGF:chc/4831698

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December 5, 2013  
Page 6

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Certified by Attorney General, December 5, 2013.

**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 governmental benefit requiring proof of citizenship or lawful presence in United States. Other provisions.

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

**EXHIBIT B**

Enrolled  
Senate Bill 833

Sponsored by Senators SHIELDS, ROBLAN, THOMSEN, HANSELL, Representatives VEGA-PEDERSON, HAREKR, JOHNSON, GILLIAM, Representatives BALLEW, BARNHART, DEMBROW, FREDERICK, GALLAGOS, GARRETT, GOMBERG, GORSEK, GREENLICK, HOLVEY, KENY-GUYER, KOMP, KOTER, MCKEOWN, NATHANSON, REARDON, TOMBL, WITT

CHAPTER \_\_\_\_\_

AN ACT

Relating to documents issued by the Department of Transportation; creating new provisions; amending ORS 368.005, 387.175, 387.805, 382.110, 382.180, 382.200, 307.130, 307.210 and 307.275; and limiting expenditures.

RECEIVED  
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STATE SECRETARY OF THE STATE

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

SECTION 1. Sections 1 to 5 of this 2018 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 3 of this 2018 Act.

(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 97.953 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 add a law enforcement agency in identifying a missing person under ORS 146.281.

**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, \$44.

(2) Fee to take the knowledge test for a Class C driver card issued under section 2 of this 2013 Act, \$8.

(3) Fee to take the skills test for a Class C driver card issued under section 2 of this 2013 Act, \$0.

(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, \$0.

- (8) Fee for reinstatement of revoked driving privileges under ORS 806.360, \$75.
- (9) Fee for reinstatement of suspended driving privileges under ORS 806.380, \$75.
- (10) Fee for reinstatement of right to apply for driving privileges after a delay under ORS 806.389 (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 renewed 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 807.150 is amended to read:

807.150. (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 386.505 is amended to read:

386.505. (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 184.842 (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.

[(f)] (7) 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 hold 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 269.701 to 269.820. 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 307.181 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 386.505.

(b) Except as provided in paragraph (c) of this subsection, moneys, once deposited in the State Highway Fund established under ORS 386.505, 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 318.830.

(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 368.782 to 368.783.

(B) Moneys provided for appropriations to cities under ORS 368.785 to 368.820.

(C) Moneys in the account established under ORS 386.512 for parks and recreation.

SECTION 10. ORS 367.805 is amended to read:

367.805. (1) Moneys deposited in the State Highway Fund established under ORS 386.505 are pledged to payment of Highway User Tax Bonds issued under ORS 367.812.

(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 335.474 and 335.480.
- (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.

(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) 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 365.782 to 365.783.
- (b) Moneys provided for appropriations to cities under ORS 366.785 to 366.830.
- (c) Moneys in the account established under ORS 368.512 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 368.507, the lien or charge of any pledge of moneys securing bonds issued under ORS 367.815 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 318.410 (2) for the purpose of carrying out the state aviation laws, amounts transferred to the Boating Safety, Law Enforcement and Facility Account by ORS 318.415, amounts transferred to the State Aviation Account by ORS 319.417 and amounts transferred to the Department of Transportation Operating Fund by ORS 164.643.

(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, 807.160 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 336.725, 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.

(C) 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 802.830.

(C) 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.

(D) 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.

(E) 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).

(F) The department shall refund from the Department of Transportation Driver and Motor Vehicle Expense 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 319.320, 319.375, 319.830 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.

(G) 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 811.555 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 821.084 and 821.160 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 802.130 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 387.606 when there are not sufficient amounts of such moneys in the State Highway Fund for purposes of bonds issued under ORS 387.815.

(8) 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, 821.180, 821.210 and 821.240 to 821.260.

(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 802.180 is amended to read:

802.180. 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 818.012 or 818.014, 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.

(g) 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.

(h) Except as otherwise provided in ORS 823.008, 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 818.022 or 818.014, 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 818.030. 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 for, 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.

(7)(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 807.030;

(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 811.740; and

(D) Every person who is required to provide future responsibility filings under ORS 808.200, 808.230, 808.235 or 808.240.

(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

§02.273. 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 808.280, 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 808.404, 809.411, 809.413 and 813.404, 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 811.105 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 26 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 808.280 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 813.375.

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

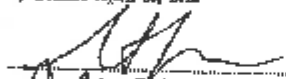
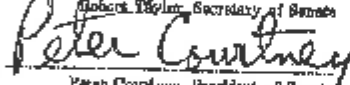
(12) The department shall maintain records of bank checks or money orders returned under OHS 802.110.

(13) The department shall maintain records of trip permits issued by the department under OHS 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 \$4,768,586 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 6 of this 2013 Act.

Passed by Senate April 30, 2013

  
Robert Taylor, Secretary of Senate  
  
Peter Courtney, President of Senate

Received by Governor

4:00 p.m. April 30, 2013

Approved

11:45 a.m. May 1, 2013

  
John Kasich, Governor

Passed by House April 30, 2013

  
Tim Ketch, Speaker of House

Filed in Office of Secretary of State

May 1, 2013

Kate Brown, Secretary of State



**EXHIBIT C**

**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 #137098ARP0003-13; 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 Kendall  
Authorized Agent - Protect Oregon Driver Licenses - Referendum #301  
Home - 503.381.6485  
PODL line - 503.435.0141

cc;  
Rep. Thatcher  
Rep. Esquivel  
Rick LaMountain

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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

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### 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.

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