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REPORT ON THE ISSUANCE OF CERTIFICATES OF IDENTIFICATION

Pursuant to Act 35, Session Laws of Hawaii 2011

Fiscal Year 2010 - 2011

**Submitted to the Twenty-Sixth State Legislature
Regular Session of 2012**

I. INTRODUCTION

Act 35, Session Laws of Hawaii 2011, amended section 846-21, Hawaii Revised Statutes, to require the Attorney General, in cooperation with the Director of Transportation and the appropriate county agencies, to allow county employees to issue certificates of identification at locations where driver's licenses are issued. This section is to take effect on January 1, 2013.

Section 3 of Act 35 required the Attorney General, in cooperation with the Director of Transportation and the counties, to explore options and procedures to allow the counties to issue certificates of identification and in consultation with the Director of Transportation and the counties to submit a report to the Legislature of findings, recommendations, and any proposed legislation no later than twenty days prior to the convening of the regular session of 2012.

II. FINDINGS

Hawaii is unique among the fifty states as it is the only state in the nation that has different government entities issuing drivers' licenses and non-driver identification, or state identification (state ID), cards. The counties, under the general supervision of the Director of Transportation, have been delegated the function of implementing the state driver licensing program since 1937. Under current law, the Department of the Attorney General issues state ID cards.

The driver licensing program has offices throughout the State that handle the initial issuances of drivers' licenses and the renewals of licenses:

<u>Island</u>	<u>Number of Ofcs Handling Initial Issuances & Renewals</u>	<u>Number of Ofcs Handling Renewals Only</u>
Oahu	5	3
Maui	5	-
Molokai	1	-
Lanai	1	-
Hawaii	2	3
Kauai	1	-

The State ID program has only one office in downtown Honolulu at the Hawaii Criminal Justice Data Center (HCJDC), with twelve permanent staff, who handle both the initial issuance as well as renewals of state ID cards. On the Neighbor Islands, except for Molokai and Lanai, the Governor's Liaison Offices assist with the issuance and renewals of state ID cards through a Memorandum of Agreement (MOA) between the Office of the Governor and the Department of the Attorney General. Through this MOA, the HCJDC pays for one half-time position on Hawaii and Kauai, and one full-time position on Maui to handle this responsibility. For residents on Molokai and Lanai, staff from the HCJDC travel to these islands one Saturday a year, to issue new and renewal cards.

In fiscal year 2010 - 2011, the following number of state ID cards was issued on each island:

<u>Island</u>	<u>Number of Regular Cards</u>	<u>Number of Senior Cards</u>	<u>TOTAL</u>
Oahu	41,773	10,561	52,334
Maui	6,385	9,590	15,975
Molokai	121	50	171
Lanai	66	19	85
Hawaii	7,694	7,787	15,481
Kauai	2,377	409	2,786
TOTAL	58,416	28,416	86,832

Act 141, Session Laws of Hawaii 1998, established the State Identification Revolving Fund to allow the state ID program to become self-supporting and provide the necessary resources and improvements required to meet the public's demand for ID cards. This program is fully self-supporting.

From a national perspective, Congress has enacted the REAL ID Act of 2005, division B of Public Law No. 109-13. The REAL ID Act specifically in sections 201 and 202, sets forth the documentation required and procedures to be followed in issuing driver licenses and non-driver identification cards. Pursuant to section 37.51 of title 6 of the Code of Federal Regulations, as amended, volume 40 Federal Register pages 12269-12271 (March 7, 2011), the required documentation and procedures must be implemented by January 15, 2013. A state shall only issue one compliant card, either a driver's license or non-driver identification card, to a citizen. Driver's licenses and non-driver identification cards that do not comply with the REAL ID Act on or after January 15, 2013, will not be recognized by federal agencies, such as the Transportation Security Administration (TSA), and may not be recognized by other states. Coordination amongst the two programs is critical as the Real ID Act must be implemented on a timely basis in order to permit Hawaii's citizens to travel and to do business with the federal government and other states.

Meetings and conference calls were held between the HCJDC, Department of Transportation, and the county agencies responsible for the issuance of driver licenses. There is unanimous support for Act 35, Session Laws Hawaii 2011, as it will benefit the citizens of Hawaii both from a local perspective in having more locations where they may obtain a state ID card, and from a national perspective in enabling a more coordinated effort in implementing the provisions of the Real ID Act.

III. RECOMMENDATION

Collectively, those involved in the issuance of driver's licenses and state ID cards conclude that it would be in the best interest of the State of Hawaii to consolidate the issuance of the driver's licenses and state ID cards under the auspices of the Department of Transportation as it is currently responsible for the statewide driver license program.

The attached proposed legislation has been drafted and reviewed by all affected parties. It will be submitted by the Governor during the regular session of 2012.

A BILL FOR AN ACT

RELATING TO CIVIL IDENTIFICATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the United States
2 enacted the REAL ID Act of 2005, division B of Public Law No.
3 109-13. The REAL ID Act sets forth in title II, specifically
4 sections 201 and 202, the kind of documentation required and
5 procedures to be followed in issuing drivers' licenses and non-
6 drivers' identification cards. Pursuant to section 37.51 of
7 title 6 of the Code of Federal Regulations, as amended, volume
8 40 Federal Register pages 12269-12271 (March 7, 2011), the REAL
9 ID Act must be implemented by January 15, 2013. The legislature
10 further finds that drivers' licenses and non-drivers'
11 identification cards that do not comply with the REAL ID Act on
12 and after January 15, 2013, will not be recognized by federal
13 agencies, such as the Transportation Security Administration,
14 and may not be recognized by other states. The REAL ID Act must
15 be implemented on a timely basis in order to permit Hawaii's
16 people to travel and to do business with the federal government
17 and other states.

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1 Hawaii is unique among the fifty states in that the
2 counties, under the general supervision of the director of
3 transportation, have been delegated the function of implementing
4 the state driver's license program since 1937. Under current
5 law, the department of the attorney general issues non-drivers'
6 identification cards. It is imperative that the two functions
7 be combined in order to comply with the REAL ID Act. The
8 purpose of this Act is to consolidate the driver's license and
9 non-driver's identification card programs for the State of
10 Hawaii under the director of transportation and to have the non-
11 drivers' identification cards issued by the examiners of drivers
12 of each county. A transition period is provided for the
13 substantial consolidation effort, with full implementation to
14 take effect on January 1, 2013.

15 Act 35, Session Laws of Hawaii 2011, further mandates the
16 attorney general to work with the director of transportation and
17 appropriate county agencies to allow county employees to issue
18 certificates of identification at the same locations where
19 drivers' licenses are issued. This is to be accomplished by
20 January 1, 2013.

21 SECTION 2. Chapter 286, Hawaii Revised Statutes, is
22 amended by adding to part VI thirteen new sections to be
23 appropriately designated and to read as follows:

1 "§286-A Issuance of identification card or temporary card.

2 (a) The examiner of drivers, upon receipt of an application
3 filed in compliance with section 286-C by any person who is a
4 resident or a temporary resident of this State, and, except as
5 otherwise provided in this section and section 286-I, upon
6 receipt of the fee therefore, shall issue an identification card
7 to that person.

8 (b) To obtain an identification card from the examiner of
9 drivers, a person must complete the application form described
10 in section 286-C.

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

14 (d) The fact of issuance of an identification card
15 pursuant to this section shall not place upon the State of
16 Hawaii or any agency thereof any liability for the misuse
17 thereof and the acceptance thereof as valid identification is a
18 matter left entirely to the discretion of any person to whom
19 such card is presented.

20 §286-B Oaths and investigations. The examiner of drivers
21 and each authorized subordinate may administer oaths and require
22 and take oral or written statements under oath of any person in

1 connection with any information required under this part or any
2 rule under this part.

3 §286-C Application for identification card. (a)

4 Application for the identification card shall be made in person
5 by any adult person or minor. The minimum age for minors to
6 obtain an identification card shall be ten years of age. In the
7 case of a minor under the age of fourteen years, the application
8 shall be made in the minor's behalf by the parent, or by another
9 person in loco parentis of such minor who can provide proof of
10 guardianship. In the case of an incompetent person, the
11 application shall be made by the person having the custody or
12 control of or maintaining the incompetent person.

13 (b) Application for renewal of an identification card
14 issued after November 1, 1998, for a person eighty years old or
15 older may be done by mailing in a completed application and fee,
16 if there is no change in name and citizenship. The director
17 shall adopt rules to allow for renewal by mail for persons with
18 physical or mental disabilities for whom application in person
19 presents a serious burden.

20 (c) Every application for an identification card or
21 duplicate shall be made on a form developed by the director and
22 furnished by the examiner of drivers, shall be signed by the
23 applicant, and by the applicant's parent or guardian if the

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1 applicant is under eighteen years of age, and shall contain the
2 following information pertaining to the applicant:

3 (1) Name, the street and number or address of the
4 applicant's permanent residence;

5 (2) The applicant's occupation and any pertinent data
6 relating thereto;

7 (3) The applicant's citizenship;

8 (4) The applicant's date and place of birth;

9 (5) General description, including the applicant's
10 gender, height, weight, hair color, and eye color;

11 (6) The applicant's left and right index fingerprints or,
12 if clear impressions cannot be obtained, other
13 identifying imprints as specified by rules of the
14 director;

15 (7) The social security number of the applicant;

16 (8) A digitized frontal photograph of the applicant's full
17 face.

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

22 (d) The application also shall state whether the applicant
23 has an advance health-care directive. If the applicant has an

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1 advance health-care directive, the identification card shall
2 bear the designation "AHCD". "Advance health-care directive"
3 means an individual instruction in writing, a living will, or a
4 durable power of attorney for health care decisions.

5 (e) The examiner of drivers, in accordance with section
6 11-6, at the time of application, shall make an application for
7 voter registration available to every applicant for an
8 identification card who is eligible to register to vote.

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

11 **§286-D Procedure.** (a) All information required by section
12 286-C shall be obtained by employees of the examiner as provided
13 for by rules of the director and by personal interviews with the
14 applicant for the identification card or parent, person in loco
15 parentis or guardian, as shown by letters of guardianship.

16 Every applicant and other person giving information on behalf of
17 any applicant under this part shall answer truthfully all
18 questions, furnish all information within the possession or
19 knowledge of the person which may be asked or required by the
20 employee within the scope of the requirements of this part, and
21 submit to the examiner all information and supporting
22 documentation required by rules of the director.

1 (b) Special provisions may be made by rules of the
2 director.

3 (c) The examiner may require an applicant, or any person
4 giving information on behalf of an applicant, to furnish
5 original or certified copies of documents to establish or
6 corroborate the information required to establish identity under
7 this part and may, by rules, set forth what documents will be
8 required to support or corroborate certain information.

9 §286-E Contents and characteristics; form. (a) Each
10 identification card issued by the examiner of drivers shall
11 display a distinguishing number assigned to the cardholder, and
12 shall display the following inscription:

13 "STATE OF HAWAII IDENTIFICATION CARD"

14 (b) The examiner of drivers, after taking the fingerprint
15 of the applicant as provided in this part and after obtaining
16 the information required by or pursuant to this part, shall
17 issue to each applicant an identification card in such form, and
18 with such identifying information as the director deems
19 necessary and appropriate. However, the identification card
20 shall not display the cardholder's social security number.

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

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1 (d) The identification card for persons under twenty-one
2 years of age shall have characteristics prescribed by the
3 examiner distinguishing it from that issued to a person who is
4 twenty-one years of age or older.

5 §286-F Expiration; renewal; replacement. (a) Every
6 identification card issued under this part, whether an original
7 or a renewal, shall bear an expiration date which shall be on
8 the person's birthday, eight years after the year of issuance;
9 provided that if the person is a legal nonimmigrant, the
10 certificate shall bear an expiration date that is the same as
11 the expiration date on the person's Immigration and
12 Naturalization Service departure card (I-94). A cardholder may
13 renew the cardholder's identification card within six months
14 before the day on which it expires by filing an application in
15 accordance with section 286-C and paying the prescribed fee
16 establish by rules of the director.

17 (b) If an identification card is lost, destroyed, or
18 mutilated, the person to whom the identification card was issued
19 may obtain a duplicate by doing both of the following:

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

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

4 A cardholder may obtain a replacement identification card
5 that reflects any change of the cardholder's name by furnishing
6 suitable proof of the change to the examiner and surrendering
7 the cardholder's existing card.

8 When a cardholder applies for a duplicate or obtains a
9 replacement identification card, the cardholder shall pay the
10 fee established by rules of the director.

11 (c) The examiner of drivers shall cancel any
12 identification card upon determining that the identification
13 card was obtained unlawfully, issued in error, or was altered.
14 The examiner also shall cancel any identification card that is
15 surrendered to the examiner after the cardholder has obtained a
16 duplicate or replacement identification card, or a REAL ID
17 compliant driver's or commercial driver's license.

18 (d) No agent of the State or its political subdivisions
19 shall condition the granting of any benefit, service, right, or
20 privilege upon the possession by any person of an identification
21 card. Nothing in this section shall preclude any publicly
22 operated or franchised transit system from using an

1 identification card for the purpose of granting benefits or
2 services of the system.

3 No person shall be required to apply for, carry, or possess
4 an identification card.

5 (e) The examiner shall not issue an identification card to
6 a person under twenty-one years of age that does not have the
7 characteristics prescribed by the examiner distinguishing it
8 from the identification card issued to persons who are twenty-
9 one years of age or older.

10 (f) Whoever violates subsection (e) shall be guilty of a
11 misdemeanor.

12 (g) To provide for the transition to issuance of
13 identification cards by the examiner of drivers, an
14 identification card issued by the attorney general prior to the
15 effective date of this Act shall be valid until its stated
16 expiration date.

17 **§286-G Identification cards not to be altered; duties of**
18 **holder; lost certificates. No person, except agents of the**
19 **examiner acting pursuant to the authority of law, shall alter,**
20 **deface, or destroy any identification card. Except as**
21 **specifically authorized by this section or the rules of the**
22 **director, no cardholder shall loan or give the person's**
23 **identification card to any other person, and no person shall use**

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1 the identification card of any other person. Any person whose
2 identification card is stolen or otherwise lost, or altered,
3 defaced, or destroyed, may at any time apply for a duplicate
4 identification card, which duplicate shall be issued by the
5 examiner upon being satisfied as to such loss, alteration,
6 defacing, or destruction. In the case of an altered or defaced
7 identification card, the identification card, if available,
8 shall be surrendered by the cardholder and canceled by the
9 examiner. Any person finding or coming into possession of the
10 identification card of any other person shall promptly return or
11 deliver the same to the owner thereof.

12 §286-H Correction or alteration of records and
13 identification cards in cases of error or subsequent changes
14 concerning names, citizenship, description, etc. (a) If, after
15 receiving an identification card, the name of any cardholder is
16 legally changed by marriage, divorce, adoption, legitimization,
17 order of the lieutenant governor, or other legal means, or if
18 there is a change in the cardholder's citizenship, or if there
19 is a change in the cardholder's address, the cardholder or other
20 person in charge of the cardholder (in the case of a minor or
21 incompetent person), within thirty days after the change of
22 name, or address, or citizenship, shall report the change and
23 present the cardholder's identification card to the examiner.

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1 The examiner, upon being satisfied as to the change and
2 receiving payment of the fee, shall cancel the identification
3 card and issue a new identification card bearing the new name or
4 citizenship or address of the cardholder, making appropriate
5 notation of the facts upon the records of the examiner.

6 (b) If any error has been made in any item of information
7 contained in the records of the examiner or the identification
8 card concerning any cardholder, the examiner, of its own motion,
9 or upon application by the cardholder, and upon receipt of
10 satisfactory evidence that an error has been committed, with the
11 approval of the examiner, may correct the error and, in such
12 case, shall make appropriate changes or notations stating the
13 error and the correct information upon the records of the
14 examiner and the identification card.

15 (c) In case any item of personal information originally
16 correct with respect to the cardholder shall change after
17 issuance of the identification card, the change, if material,
18 may be registered by the examiner and the records and
19 identification card may be altered to conform thereto, upon
20 receipt by the examiner of satisfactory evidence as to the
21 change and the approval of the examiner.

22 §286-I Rules. For the purpose of carrying out this part
23 the director, subject to chapter 91, shall adopt rules having

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1 the force and effect of law including rules assessing reasonable
2 fees for the services provided under this part. The rules shall
3 provide for a waiver of any fee in cases of extreme hardship.

4 §286-J Forms. The director may prepare, prescribe, and
5 furnish, in conformity with this part, forms for questionnaires,
6 notices, fingerprint cards or forms, certificates of
7 identification, instructions, and all other forms necessary or
8 proper for the prompt, efficient, and adequate execution of the
9 functions of the examiner set forth in this part.

10 §286-K Custody and use of records; information
11 confidential. (a) All information and records acquired by the
12 examiner of drivers under this part shall be confidential. All
13 information and records shall be maintained in an appropriate
14 form and in an appropriate office in the custody and under the
15 control of the examiner. The information shall be available
16 only to authorized persons under such restrictions as the
17 director shall prescribe. The examiner may dispose of any
18 application or identification card, or information or record
19 relating to such application or identification card, which does
20 not include a social security number, without regard to the
21 provisions of chapter 94, whenever, in the examiner's
22 discretion, retention of such information or record is no longer
23 required or practicable.

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1 (b) No officer or employee of the examiner shall divulge
2 any information concerning any cardholder acquired from the
3 records of the examiner or acquired in the performance of any of
4 the officer's or employee's duties under this part to any person
5 not authorized to receive the same pursuant to this part. No
6 person acquiring from the records any information concerning any
7 cardholder shall divulge the information to any person not so
8 authorized to receive the same.

9 §286-L State identification card fee special fund. There
10 is established in the state treasury a special fund to be known
11 as the state identification card fee special fund. The fund
12 shall consist of all fees assessed for the processing and
13 issuance of identification cards. The fund shall be used for
14 the purposes of the identification card program. The fund shall
15 be administered by the director. The fund shall be held
16 separate and apart from all other moneys, funds, and accounts in
17 the state treasury. Interest and investment earnings credited
18 to the assets of the fund shall become a part of the fund. Any
19 balance remaining in the fund at the end of any fiscal year
20 shall be carried forward in the fund for the next fiscal year.

21 §286-M. Reimbursement to counties. The counties shall be
22 reimbursed the incremental costs incurred in the administration

1 of this chapter. The amount of reimbursement shall be
2 determined by the director of transportation."

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

6 "Identification card" means a document made or issued
7 under the authority of this chapter which, when completed with
8 information concerning a particular individual, is intended
9 solely for the purposes of identification."

10 SECTION 4. Chapter 286, Hawaii Revised Statutes, is
11 amended by amending the title of part VI to read as follows:

12 "PART VI. MOTOR VEHICLE DRIVER LICENSING AND
13 IDENTIFICATION CARDS"

14 SECTION 5. Section 286-102, Hawaii Revised Statutes, is
15 amended by amending subsection (c) to read as follows:

16 "(c) No person shall receive a driver's license without
17 surrendering to the examiner of drivers all valid drivers'
18 licenses and all valid identification cards in the person's
19 possession. All licenses and identification cards shall be
20 returned to the issuing authority, together with information
21 that the person is licensed in this State; provided that with
22 the exception of drivers' licenses issued by any Canadian
23 province, a foreign driver's license may be returned to the

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1 owner after being invalidated pursuant to issuance of a Hawaii
2 license; and provided further that the examiner of drivers shall
3 notify the authority that issued the foreign license that the
4 license has been invalidated and returned because the owner is
5 now licensed in the State. No person shall be permitted to hold
6 more than one valid driver's license at any time."

7 SECTION 6. Part II of chapter 846, Hawaii Revised
8 Statutes, is repealed.

9 SECTION 7. All valid and unexpired non-drivers'
10 identification cards issued by the attorney general up to and
11 including December 31, 2012, shall remain valid for all purposes
12 until their stated expiration date.

13 SECTION 8. The jurisdiction, functions, powers, duties,
14 and authority heretofore executed by the attorney general shall
15 be transferred and conferred upon the director of transportation
16 and shall be performed and enforced in the same manner as
17 previously authorized, entitled, or obligated except as
18 otherwise authorized, directed, or instructed by this Act.

19 The director of transportation shall succeed to all of the
20 rights and powers previously exercised, and all of the duties
21 and obligations incurred by the attorney general in the exercise
22 of the functions, powers, duties, and authority transferred,

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1 whether such functions, powers, duties, and authority are
2 mentioned in or granted by any law, contract, or other document.

3 All rules, policies, procedures, guidelines, and other
4 material developed or adopted by the attorney general to
5 implement provisions of the Hawaii Revised Statutes to substance
6 of which are reenacted or made applicable to the director of
7 transportation under this Act, shall remain in full force and
8 effect until amended or replaced by the director of
9 transportation pursuant to chapter 91, Hawaii Revised Statutes.

10 All leases, contracts, agreements, permits or other
11 documents executed or entered into by or on behalf of the
12 attorney general pursuant to the provisions of the Hawaii
13 Revised Statutes, the substance of which are reenacted or made
14 applicable to the director of transportation by this Act, shall
15 remain in full force and effect.

16 SECTION 9. Effective January 1, 2013, all personnel
17 employed by and positions in the department of the attorney
18 general whose functions, duties, responsibilities, and
19 activities involved the collection and review of information
20 related to issuance of non-drivers' identification cards,
21 record-keeping, fingerprinting and issuance of non-drivers'
22 identification cards, including data processing, administrative
23 services, and the like, shall be transferred to the examiner of

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1 drivers of the respective counties pursuant to a plan approved
2 by the State and the counties. As with drivers' and commercial
3 drivers' licenses, the director of transportation shall retain
4 such authority as necessary to ensure uniformity in the issuance
5 of identification cards.

6 All such personnel transferred shall transfer without loss
7 of salary, seniority, prior service credits, vacation, sick
8 leave, or other employee benefits or privileges as a consequence
9 of such transfer.

10 In the event that an office or position held by any
11 employee having tenure is affected by workload changes or is
12 abolished, such employee shall not thereby be separated from
13 public employment but shall remain in the employment of the
14 State in accordance with the civil service law, the applicable
15 bargaining unit contract, or the state personnel rules and
16 regulations, whichever is applicable.

17 SECTION 10. All records, equipment, files, supplies,
18 contracts, books, papers, documents, appropriations, balances in
19 the state identification revolving fund and other property
20 theretofore made, used, acquired, or held by the department of
21 the attorney general in connection with non-drivers'
22 identification cards shall be transferred with the functions to

1 which they relate to the director of transportation or the
2 respective counties, as the case may be.

3 SECTION 11. No suit or prosecution relating to the subject
4 matter of this Act pending at the time this Act takes effect
5 shall be affected by this Act.

6 SECTION 12. All laws and parts of laws heretofore enacted
7 that are in conflict with the provisions of this Act are hereby
8 amended to conform herewith.

9 SECTION 13. This Act shall be liberally construed to
10 accomplish the purposes set forth in section 1. Any portion of
11 this Act judicially declared to be invalid shall not affect the
12 validity of the remaining portions of this Act.

13 SECTION 14. In codifying the new sections added to chapter
14 286, Hawaii Revised Statutes, by section 2 of this Act, the
15 revisor of statutes shall substitute appropriate section numbers
16 for the letters used in the designations of, and references to,
17 those new sections in this Act.

18 SECTION 15. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 16. This Act shall take effect on January 1, 2013.

21

22 INTRODUCED BY: _____

23

BY REQUEST

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Report Title:

Civil Identification

Description:

To make the Director of Transportation responsible for the non-driver's identification card program for the State of Hawaii and to have the non-drivers' identification cards issued by the examiners of drivers in each county to comply with the federal REAL ID Act of 2005, division B of Public Law No. 109-13, by January 15, 2013.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.