LEGAL SERVICES

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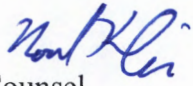120 4th Street, Room 3

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MEMORANDUM   November 27, 2019

SUBJECT: Numeric characters in names on licenses/IDs
                   (Work Order No. 31-LS1262)

TO: Senator Mia Costello
                   Attn: Joe Plesha

FROM: Noah Klein
                   Legislative Counsel

The bill draft you requested is attached. As your request notes, requiring the Division of Motor Vehicles (DMV) to accept and display numeric characters as names on licenses or IDs may conflict with the Real ID Act (the Act).[1] You may wish to consult with the DMV and potentially the Department of Homeland Security (DHS) to ascertain whether a Real ID may display a numeric character as a name.

1. Real ID Regulations may Prohibit Numeric Characters in Names.

When adopting regulations implementing the Act, the DHS likely intended to prohibit numeric characters, i.e., 0 through 9, as names on licenses or IDs. When proposing regulations under the Act DHS explained:

> With regard to the name placed by the DMV on the face of the driver's license or identification card, DHS is proposing to adopt the ICAO [International Civil Aviation Organization] 9303 standard. The ICAO 9303 standard requires Roman alphabet characters, allows a total of 39 characters on the face of the driver's license or identification card, and provides standards for truncation of longer names.[2]

The referenced ICAO 9303 standard appears to prohibit numeric characters in names, providing in part:

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[1] Title II of the Act mandates what data must appear on licenses or IDs and restricts the documentation a state may accept before issuing a license or ID. REAL ID Act of 2005, P.L. 109-13 (2005) (see notes to 49 U.S.C.A. § 30301).

[2] Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes, 72 Fed. Reg. 10820, 10835 (proposed Mar. 9, 2007) (to be codified at 6 C.F.R. pt. 37).

> Numeric characters should not be written in the name fields of the VIZ [visual inspection zone]; however, where the use of numeric characters is a legal naming convention in the issuing State, these should be represented in Roman numerals. Any prefixes, suffixes or Roman numerals shall be entered in the secondary field.[3]

Despite DHS's express statement of intent to adopt the ICAO 9303 standard for names on licenses and IDs, DHS proposed the following rule:

> (g) *Printed information.* The name, date of birth, gender, card number, issue date, expiration date, and address on the face of the card must be in Roman alphabet characters. The name must contain a field of no less than a total of 39 characters for the full legal name, and longer names may be truncated following the standard established by International Civil Aviation Organization (ICAO) 9303, "Machine Readable Travel Documents," Part IV, Sixth Edition, 2005.[4]

The proposed rule is unclear because (1) it appears to require alphabetic characters rather than numeric characters for dates and numbers, and (2) despite DHS's clearly expressed intent, the rule does not explicitly incorporate the ICAO 9303 prohibition on numeric characters in names.

DHS ultimately adopted the following final rule:

> (m) Printed information. The name, date of birth, gender, card number, issue date, expiration date, and address on the face of the card must be in Latin alpha-numeric characters. The name must contain a field of no less than a total of 39 characters, and longer names shall be truncated following the standard established by International Civil Aviation Organization (ICAO) 9303, "Machine Readable Travel Documents," Part IV, Sixth Edition, 2005.[5]

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[3] Int'l Civil Aviation Org., Doc 9303, Machine Readable Travel Documents 4 (7th ed. 2015).

[4] Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes, 72 Fed. Reg. 10820, 10854 (proposed Mar. 9, 2007) (to be codified at 6 C.F.R. pt. 37).

[5] Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes; Final Rule, 73 Fed. Reg. 5271, 5335 (Jan. 29, 2008) (codified at 6 C.F.R. § 37.17).

The change in the final rule to "alpha-numeric characters" addresses the confusing requirement that licenses and IDs use alphabetic characters for dates and numbers, but it again fails to explicitly adopt the ICAO 9303 standard prohibiting numeric characters in names. Thus, after DHS clearly expressed intent to adopt the ICAO 9303 requirements, including the requirement for alphabetic characters in names, the final rule does not clearly prohibit numeric characters.

I reviewed DHS's responses to comments on the proposed Real ID rules. No comment or response expressed concern with DHS's initial statement that it intended to prohibit numeric characters in names.[6] Although it is not entirely clear, DHS may still intend to prohibit numeric characters in names. Because courts reviewing this regulation would defer to DHS's interpretation of its own regulation, if DHS asserted that numeric characters are prohibited a court would probably accept this interpretation.[7]

You may wish to ascertain DMV's position regarding numeric characters as names on Real IDs.

2. Numeric Characters on Licenses and IDs that are not Federally Compliant.

The bill draft requires that Alaska licenses and IDs display numeric characters whenever numeric characters appear as the name on the document used to verify identify. However, Alaska law allows DMV to issue both federally compliant and non-federally compliant licenses and IDs.[8] If you would like the bill to require that DMV display numeric characters on federally compliant or non-federally compliant licenses and IDs only, please let me know.

If I may be of further assistance, please advise.

NIK:kwg
19-338.kwg

Attachment

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[6] Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes; Final Rule, 73 Fed. Reg. 5271 (Jan. 29, 2008) (codified at 6 C.F.R. pt. 37).

[7] *See Norfolk S. Ry. Co. v. Shanklin*, 529 U.S. 344, 356 (2000) ("[G]enerally 'an agency's construction of its own regulations is entitled to substantial deference.'" (quoting *Lyng v. Payne*, 476 U.S. 926, 939 (1986))).

[8] AS 28.15.041(d)–(e); AS 18.65.310(n)–(o).