

Ernest Prax

From: Stock, Margaret <StockM@LanePowell.com>
Sent: Sunday, February 17, 2013 6:14 PM
To: Ernest Prax
Cc: Jeff Landfield (jeff@texrus.com)
Subject: Statement regarding HB1, Drivers License bill

Importance: High

Dear Mr. Prax,

At your request, I am providing the following statement regarding HB1, the new drivers' license bill introduced by Representative Lynn:

Background: HB1 adds a new section to Alaska Statute 28.15.101, which deals with drivers' licenses. The bill changes Alaska law so that the Department of Motor Vehicles may issue a drivers' license of less than five years validity to two types of people:

- 1) People who are authorized "to stay in the United States for less than five years" (they get licenses good for varying periods of time, up to but not equaling five years) and
- 2) People whose authorized stay in the United States is "indefinite" (they get licenses good for one year at a time)

The first part of the bill would appear to apply to non-citizens who are given permission by various federal agencies (including Customs and Border Protection, United States Citizenship & Immigration Services, and Immigration & Customs Enforcement) to stay in the United States for periods that are not indefinite but are less than five years. There are more than eighty categories of such people, but they include H2B oilfield and fishing industry workers (given permission to be in Alaska seasonally, so they would presumably have to get a new license every year when they report to work for the season); Treaty NAFTA Canadian workers (they would have to renew their licenses each time they went home to Canada for vacation, when they are given new periods of stay in the United States upon returning); H-1B professional workers (they would have to get a new license every 1-3 years, or whenever they travel outside the US and return); and E-1/E-2 treaty traders or investors (they typically own small businesses in Alaska, and would have to renew their licenses regularly, as their expiration of stay also changes regularly).

The second part of the bill would appear to apply to people who are given permission to stay in the United States for "indefinite" periods (such people include refugees, asylees, lawful permanent residents, and PRUCOL aliens). [Note: There appear to be technical problems with the bill in that people who are given permission to be in the United States for more than five years but not "indefinitely" are treated more favorably than people

who have been given “indefinite” permission to be in the United States, but this issue will likely be resolved by litigation, so I will leave it aside for now. It is also not clear how foreign students are to be treated, as they are admitted “duration of status” and not “indefinitely” and the DMV will presumably have to figure out what to do with them.]

People who fall into Category 1 will apparently be eligible for drivers’ licenses good “for the period of the authorized stay.” People who fall into Category 2 “shall” be issued licenses “with a validity period of one year.” This distinction creates an Equal Protection problem in that persons admitted indefinitely (such as refugees and asylees) are treated in a less favorable manner than persons who are in the United States temporarily in non-immigrant visa status. For example, a Christian Evangelical refugee admitted to the United States indefinitely must get a new license every year, while a China Airlines pilot admitted in E-2 status for three years will be able to get a three-year driver’s license, although the refugee is in a Constitutionally protected category and the China Airlines pilot is not.

The bill promises to create significant problems for the Department of Motor Vehicles. Here are some of the problems:

1) The bill would require DMV to become expert in more than eighty different types of non-immigrant and other statuses. People in the different categories are subject to varying rules regarding the length of time they may stay in the United States, and their length of stay can be a moving target, as it is affected by constantly changing US Government policies and regulations, whether their employers file petitions for them, whether they renew or extend their status; whether they travel across borders (a trip to their home country on vacation can trigger a new extension of their period of lawful stay in the United States on their return); whether the President or a Cabinet official issues an Executive Order (Ex: “Temporary Protection Status” for individual countries is extended automatically by announcement in the Federal Register, see <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=848f7f2ef0745210VgnVCM100000082ca60aRCRD&vgnnextchannel=848f7f2ef0745210VgnVCM100000082ca60aRCRD#Countries%20Currently%20Designated%20for%20TPS> (listing countries whose citizens’ TPS status has been automatically extended)). The DMV does not currently employ any immigration or citizenship attorneys who can keep up with the constant changes in Federal laws, regulations, and policies that affect the length of time a foreign national is permitted to remain in the United States. However, the DMV will need to do so, to be sure that the DMV can determine that a person’s drivers’ license expires exactly when the person’s status does. Nor has the Legislature appropriated the substantial funds necessary to hire such experts or otherwise to carry out this bill.

2) The bill will lead to expensive litigation. Similar bills in other states have resulted in costly litigation that eventually resulted in changes to the bills and the award of attorneys’ fees against the States that passed such legislation. For example, New Hampshire attempted the policy of providing short duration drivers’ licenses to persons with “indefinite” status more than seven years ago. The State of New Hampshire was successfully sued in Federal Court by a number of affected plaintiffs, including a Roman Catholic Irish nun, and was forced to change its policy as a result of the lawsuit. Alaska’s Constitution (Section 1.3, Civil Rights—“No person is to be denied the enjoyment of any civil or political right because of race, color, creed, sex, or national origin”) as well as the Federal Constitution provide fertile ground for a successful lawsuit against this proposed bill. The

sponsors have not provided any report to the legislature on the experience of other States that have enacted similar bills, and in particular, they have not provided a report on the costs to those States of this measure. If they had provided such a report, it would reflect that this bill is a very costly measure.

3) The bill would have the Alaska DMV enforcing Federal immigration law. At a time when the enforcement of Federal laws by Alaska State agencies is controversial, it is perplexing that allegedly Conservative Alaska legislators want to expend State energy and resources enforcing a very complicated area of Federal law that has been likened to "King Minos's labyrinth in ancient Crete." Why not also enforce Federal tax laws or gun laws at the DMV?

4) The impact of the bill will mostly fall on Alaskan businesses, foreign workers, foreign students, and refugees/asylees. Although the bill's sponsors may have meant to deny driver's licenses to unauthorized immigrants, Alaska has a very tiny population of unauthorized immigrants compared to the rest of the United States. A recent study (released by the Center for Migration Studies in February 2013) indicates that Alaska's unauthorized immigrant population is less than 5000 people, and most of these unauthorized immigrants do not drive (a large number are children, elderly, or the widows/widowers or relatives (including battered spouses) of American citizens who have failed to file the correct immigration paperwork for them). Accordingly, the new statute will mostly affect legally present foreigners, who will be forced to return repeatedly to the DMV to get new drivers' licenses, and to bring their immigration lawyers with them to explain their immigration statuses to DMV employees who will be unable to comprehend all the different immigration statuses. Alaskan employers who hire foreign workers will be lining up to complain about this bill, as will the faith-based community (which often sponsors refugees and asylees) and the University system. Experiences in other States with similar laws have not been positive. Laws like HB1 have created chaos at the DMVs and have also created "full employment for immigration lawyers." Colorado passed a similar bill, and I am aware of a law firm in Colorado that now has an attorney whose job is to go to the DMV with foreign clients—it is a good job for the lawyer, but expensive for the clients and the businesses that employ them. I separately provided you with a statement from a foreign worker in Tennessee who has had very bad experiences at the Tennessee DMV after Tennessee passed a similar law.

5) The bill's sponsor, Rep. Lynn, appears to misunderstand what the bill does. In a statement posted on his website, Rep. Lynn states that "Under current law, an alien visiting the United States with a visa that expires in two weeks could get an Alaska drivers license that doesn't expire for five years. This bill links the duration of the driver's license to the duration of the visa, or any other legal presence document." See Rep. Lynn's statement, found at <http://housemajority.org/spon.php?id=28hb1>. This statement demonstrates that Rep. Lynn does not understand what a "visa" is and he is also unfamiliar with the modern system of determining legal presence, which often does not result in a person being given a single document with an expiration date on it. A "visa" is a travel document; it does not necessarily determine how long a person can remain in the United States. The US Government regularly issues ten-year B-1/B-2 visitor's visas to foreign nationals; having an unexpired ten-year B-1/B-2 visa in one's passport does not mean that a person can stay in the United States for ten years, however; when the person arrived at a US airport, a Customs & Border Protection agent may have given the person permission to stay in the United States for only two weeks. Conversely, a person may have an expired visa in his or her passport and be in valid status in the United States; typically, for example, a foreign student attending the University of Alaska who has not been outside the United States in three or four years will have an expired visa, but having been admitted "duration of status" to the United States, will be in valid status as long as he or she is attending classes. Moreover, it is often difficult for people to demonstrate with a single

document when their period of stay in the United States will end, as the US Government has increasingly resorted to electronic means to determine status expiration. Although the Alaska DMV has access to one federal system that can be used to verify some people's statuses (the SAVE system), the Alaska DMV does not currently have access to the electronic databases that would verify the status of foreign students (SEVIS) or the federal immigration databases maintained by DHS that govern visitors or certain foreign workers. Moreover, the Federal Government has no plans to give DMV access to these databases. Because of the complexity of federal immigration laws, it can often take an expert immigration lawyer or a federal law enforcement official more than an hour to figure out—in an individual case—when a person's status is due to expire. A person can also automatically change the expiration date of his or her status by filing paperwork with federal immigration authorities or by making a brief trip outside the United States, which complicates matters even more.

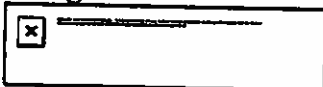
In short, this is a bad bill that was not researched before it was introduced. It will cost Alaska's taxpayers a lot of money to implement this bill, and the bill is unfriendly to Alaska businesses. I trust that this brief summary of the issues relating to HB1 will encourage my legislators in Juneau to defeat this bill. At a time when citizens are calling for a reduction in state spending, it seems ill-advised to be passing such expensive new legislation, particularly when no one has yet identified the problem that this legislation purports to solve. Taking on the expensive new task of asking the Department of Motor Vehicles to enforce complex Federal laws such as the immigration laws seems to me to be a recipe for disaster. It is certainly not a Conservative approach to state government.

Please let me know if you have further questions. For purposes of identification, I am a lawyer, a registered Republican voter, and a recognized expert on drivers' license issues (I have testified in Federal court on state driver's license issues). I also represent numerous Alaska businesses who employ foreign workers who will be harmed by this bill.

Sincerely,

Margaret Stock

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