

**HB**

**1**

<TARGET><BILL>HB 1</BILL><SUBJECT>HB  
1</SUBJECT><COMM>HJUD28</COMM></TARGET>



# Alaska State Legislature

**Chairman**  
State Affairs Committee

**Vice-Chair**  
Judiciary Committee

**Member**  
Transportation Committee  
Joint Armed Services Special Committee

**Finance Subcommittees**  
Administration  
Corrections  
Military and Veterans' Affairs



*A Communication From*  
**REPRESENTATIVE BOB LYNN**  
**District 23 Anchorage**

**E-Mail: Rep.Bob.Lynn@akleg.gov**

**Session:**  
Alaska State Capitol #108  
Juneau, AK 99801-1182

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**Interim:**  
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Phone: (907) 269-0205  
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January 30, 2013

**To:** Representative Wes Keller, Chair  
House Judiciary Committee

**Fr:** Representative Bob Lynn *BL*

**Re:** HB 1 Requirement for Driver's License

I respectfully request that you hear HB 1 in House Judiciary at your earliest convenience. HB 1 authorizes the DMV to issue Driver's Licenses with an expiration date of less than 5 years.

Attached are the following documents:

- HB 1 Version O
- Sponsor Statement
- 37 States with Authorized Length of Stay
- Memo regarding other states with authorized length of stay
- Letter from Attorney General's office
- ACLU Opposition letter
- FAQs
- Witness List
- Fiscal Note
- Participants/Testimony

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## Sponsor Statement

### HB 1

*“An Act relating to issuance of driver’s licenses.”*

This bill enables the Department of Motor Vehicles (DMV) to issue a driver’s license for a period of less than five years for persons who have a legal presence in the United States for less than five years.

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.

If the legal presence document is for an indefinite period, the driver’s license would be issued for only one year, but could be renewed each year up to a period of five years, at no additional cost to the driver.

Similar legislation has been passed in other states.

# Fiscal Note

State of Alaska  
2013 Legislative Session

Bill Version: CSHB 1(STA)  
Fiscal Note Number: 1  
(H) Publish Date: 1/30/13

Identifier: HB001-DOA-DMV-1-25-13  
Title: REQUIREMENTS FOR DRIVER'S LICENSE  
Sponsor: \*\* LYNN, HAWKER  
Requester: House State Affairs

Department: Department of Administration  
Appropriation: Motor Vehicles  
Allocation: Motor Vehicles  
OMB Component Number: 2348

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
<b>OPERATING EXPENDITURES</b>	<b>FY 2014</b>	<b>FY 2014</b>					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time							
Part-time							
Temporary							

**Change in Revenues**

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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? yes  
If yes, by what date are the regulations to be adopted, amended or repealed? 01/01/14

**Why this fiscal note differs from previous version:**

Not applicable, initial version.
----------------------------------

Prepared By: Amy Erickson, Director

Division: Motor Vehicles

Approved By: Curtis Thayer, Deputy Commissioner

Department of Administration

Phone: (907)269-5559

Date: 01/25/2013 12:41 PM

Date: 01/25/13

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA  
2013 LEGISLATIVE SESSION

BILL NO. CSHB 1(STA)

**Analysis**

This bill allows DMV to issue a driver's license with duration of less than five years if the person is authorized to stay in the United States for less than five years or the period of authorized stay is indefinite.

The impact of this bill on DMV will be minimal. Additional training will be provided to staff to ensure issued licenses expire with the applicant's legal stay.

This bill has no fiscal impact on DMV.

# Fiscal Note

State of Alaska  
2013 Legislative Session

Bill Version: HB 1 (U)  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: HB001-DOA-DMV-1-25-13  
Title: REQUIREMENTS FOR DRIVER'S LICENSE  
Sponsor: \*\* LYNN, HAWKER  
Requester: House State Affairs

Department: Department of Administration  
Appropriation: Motor Vehicles  
Allocation: Motor Vehicles  
OMB Component Number: 2348

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates				
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**Positions**

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Part-time							
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<b>Change in Revenues</b>							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

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**ASSOCIATED REGULATIONS**

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if yes, by what date are the regulations to be adopted, amended or repealed? 01/01/14

**Why this fiscal note differs from previous version:**

Not applicable, initial version.
----------------------------------

Prepared By:	Amy Erickson, Director	Phone:	(907)269-5559
Division:	Motor Vehicles	Date:	01/25/2013 12:41 PM
Approved By:	Curtis Thayer, Deputy Commissioner	Date:	01/25/13
	Department of Administration		

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2013 LEGISLATIVE SESSION

BILL NO. HB001

**Analysis**

This bill allows DMV to issue a driver's license with duration of less than five years if the person is authorized to stay in the United States for less than five years or the period of authorized stay is indefinite.

The impact of this bill on DMV will be minimal. Additional training will be provided to staff to ensure issued licenses expire with the applicant's legal stay.

This bill has no fiscal impact on DMV.

# HB1 Driver's License Bill

## FAQ

**Q: Does this affect who can obtain a driver's license?**

*A: No, HB1 does not have any effect on current DMV policies or regulations on applying for and receiving a driver's license.*

**Q: Does this affect how people obtain their driver's licenses?**

*A: No, HB1 does not have any effect on current DMV policies or regulations on applying for and receiving a driver's license.*

**Q: What, exactly, does the bill do?**

*A: HB1 simply allows for DMV to issue a driver's license with a duration of less than five years if the person is authorized to stay in the US for less than five years. For example, if a person has a student visa that expires in 6 months, their Alaska Driver's license will expire on the same date as their authorized stay documentation. Currently, the state is required to issue a driver's license for five years.*

**Q: What about those people whose status is "indefinite" or "pending?"**

*A: In the rare case that someone's status does not yet have an end date or specified duration, the DMV will issue a Driver's License for a period of one year.*

**Q: Will DMV post immigration status on a driver's license?**

*A: No. Nothing in HB1 even intimates this.*

**Q: What is the need for this bill?**

*A: This bill is about good governance. Representative Lynn does not believe the state of Alaska should be issuing official or legal documentation that outlasts or contradicts the documentation issued by the federal government.*

**Q: Will DMV be required to verify immigration status because of this bill?**

*A: HB1 does not change ANY of DMV's current verification procedures. When someone applies for a driver's license or state ID for the first time, they must prove their identity. For citizens, this means a birth certificate and social security number. Foreign nationals, and anyone else who doesn't have a SSN, must verify why they do not have one. This normally means they must present legal presence or immigration documents, but nothing current statute or HB1 requires anyone to show DMV immigration documentation or requires DMV to ask for it.*

**Q: How many other states have a policy that requires driver's licenses to expire at the same time as authorized stay documentation?**

*A: Thirty-six (36) and the District of Columbia. This is also recommended under the American Association of Motor Vehicle Administrators best practices.*

**Q: Is this legislation constitutional?**

*A: Absolutely. The fact that 36 states and the District of Columbia currently have these same provisions in statute, and that none of them have been successfully challenged, are proof that this legislation is constitutional. The Attorney General's office agrees with this.*

**Q: Will this bill force those affected to pay more in fees than regular citizens?**

*A: No. This bill allows for those people required to renew their driver's license more frequently to do so without fees for up to five years. This way they will pay the same amount as someone issued a full five year license.*

## **AS 28.15.101. Expiration and Renewal of Driver's License.**

**(a)** Except as otherwise provided in this chapter, a driver's license expires on the licensee's birthday in the fifth year following issuance of the license. A license may be renewed within one year of its expiration upon proper application, payment of the required fee, and except when a license is renewed under (c) of this section, successful completion of a test of the licensee's eyesight.

**(b)** The department may defer the expiration of the driver's license of a person who is outside the state under terms and conditions that the department shall prescribe by regulation.

**(c)** A driver's license may be renewed by mail if the licensee complies with (a) of this section, except that a license may not be renewed by mail if:

- (1)** the most recent renewal of the applicant's license was by mail; or
- (2)** the applicant is 69 years of age or older on the expiration date of the driver's license being renewed.

# STATE OF ALASKA

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL

SEAN PARNELL  
GOVERNOR

LABOR & STATE AFFAIRS  
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PHONE: (907) 269-6612  
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January 28, 2013

Representative Bob Lynn  
State Capitol Room 108  
Juneau, Alaska 99801

Re: HB-1

Dear Representative Lynn:

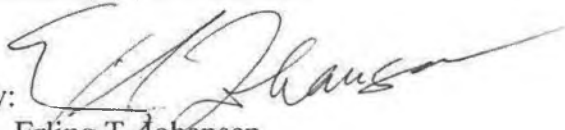
Mr. Wolfe of your office contacted me concerning the above-referenced bill.

Consistent with Department of Law practice, I have reviewed this bill. In my review, I saw no basis for constitutional challenge of it.

Sincerely,

MICHAEL C. GERAGHTY  
ATTORNEY GENERAL

By:



Erling T. Johansen  
Assistant Attorney General

ETJ/ljt



February 15, 2013

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TONY STRONG, Douglas

EMMA HILL, Anchorage  
STUDENT ADVISOR

The Honorable Wes Keller, Chair  
The Honorable Bob Lynn, Vice-Chair  
House Judiciary Committee  
Alaska State House of Representatives  
State Capitol  
Juneau, AK 99801

via email: [Rep.Wes.Keller@akleg.gov](mailto:Rep.Wes.Keller@akleg.gov)  
[Rep.Bob.Lynn@akleg.gov](mailto:Rep.Bob.Lynn@akleg.gov)

Re: **CS House Bill 1 (STA) –  
Relating to Issuance of Driver's Licenses  
Constitutional Infirmities**

Chair Keller, Vice-Chair Lynn:

Thank you for the opportunity to submit written testimony regarding the House State Affairs Committee Substitute for House Bill 1, Relating to Issuance of Driver's Licenses.

The American Civil Liberties Union of Alaska represents thousands of members and activists throughout the State of Alaska who seek to preserve and expand individual freedoms and civil liberties guaranteed under the United States and Alaska Constitutions. In that regard, we appreciate the opportunity to provide the Committee with information highlighting significant constitutional infirmities with the proposed legislation.

We would be happy to work with you or the Committee to answer any questions you might have.

### **Purpose of Driver's License, and Federal Pre-Emption**

A driver's license's "primary purpose is to allow its bearer lawfully to drive a car." *U.S. v. Campos-Serrano*, 404 U.S. 293, 299 (1971). **It is not intended as a document to relate to one's immigration status.**

CS for HB 1 (STA) would require the State of Alaska both to determine *whether* someone is legally present in the country and to speculate on *how long* that individual may stay. This determination implicates the Supremacy Clause of the United States Constitution, which guarantees that **federal law will supersede state law in the areas of immigration**. "The Federal Government has broad constitutional powers in determining what aliens shall be admitted to the United States, the period they may remain, regulation of their conduct before naturalization, and the terms and conditions of their naturalization. Under the Constitution the states are granted no such powers; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states. *State laws which impose discriminatory burdens upon the entrance or residence of aliens lawfully within the United States conflict with this constitutionally derived federal power to regulate immigration, and have accordingly been held invalid.*" *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (citations omitted) (emphasis added).

The once-a-year requirement to renew a driver's license for those present for an indefinite period of time bears a striking similarity to the annual registration requirement for legal immigrants overturned in *Hines v. Davidowitz*, 312 U.S. 52, 59-60 (1941). In *Hines*, legal aliens were required to obtain a Pennsylvania identification card, renewed every year, which had to be shown, among other purposes, "as a condition precedent to registering a motor vehicle in his name or obtaining a license to operate one." *Id.* at 59. ***The Pennsylvania identification requirement was invalidated, as Congress had reserved entirely to itself, or "occupied the field" of, the management of aliens within the borders of the United States.*** *Id.*, (emphasis added).

Last year, the United States Supreme Court reaffirmed the logic of the *Hines* decision by rejecting an Arizona law which punished as a misdemeanor the failure of any legal immigrant to carry an "alien registration document," as the Court found that the federal government had the exclusive authority to register non-citizens. *Arizona v. United States*, 132 S. Ct. 2492, 2502 (2012). ***CS for HB 1 (STA) would essentially make state driver's licenses into "alien registration documents" used in tracking the legal status of non-citizens by the state government, which is not a proper role for the state of Alaska, nor among the traditional "police powers" of state governments.***

The United States Supreme Court has even held that some state laws relating exclusively to *undocumented immigrants* may violate the Supremacy Clause, where the regulation does not clearly serve legitimate state interests. *Plyler v. Doe*, 457 U.S. 202, 226-30 (1982) (overturning a Texas policy of not reimbursing public school districts for the costs associated with teaching

undocumented students). Further, various federal statutes manifest intent to prohibit discrimination against people on the basis of immigration status. *See, e.g.*, 8 U.S.C.A. § 1324b.

These cases and statutes indicate that – if enacted – a court could determine that CS for HB 1 (STA) violates the Supremacy Clause.

### **Legislation Directed at Immigrants: Suspect Classification**

Generally, regulations explicitly directed at legal immigrants are considered suspect classifications, like distinctions based on race and nationality. *Graham v. Richardson*, 403 U.S. 365, 372 (1971). *The State of Alaska may not impose a special condition of driver's license renewal on legal immigrants, for similar reasons as it could not impose such conditions on drivers of a certain race, sex, or religion.*

CS for HB 1 (STA), if enacted as drafted, would regulate the issuance of essential identification to legal immigrants, in a manner discriminatory towards those legal immigrants and potentially quite burdensome. Some immigrants may have short-term visas which are periodically renewed. The State of Alaska would impose unreasonable burdens on those immigrants by mandating that they also renew their driver's licenses each time they obtain a new visa, *for reasons having nothing to do with the fitness of the individual to drive a car.*

In an earlier case, the United States Supreme Court rejected state efforts to limit the issuance of a fishing license only to those eligible for citizenship. “[T]he power of a state to apply its laws exclusively to its alien inhabitants as a class is confined within narrow limits.” *Torao Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, 420 (1948). The Court rejected the notion that a “state can adopt one or more of the same [federal immigration] classifications to prevent lawfully admitted aliens within its borders from earning a living in the same way that other state inhabitants earn their living.” *Id.* at 418-19.

In a recent case, the federal appeals court for the Second Circuit struck down a law prohibiting non-immigrant aliens from obtaining licenses to work as pharmacists. *Dandamudi v. Tisch*, 686 F.3d 66, 80 (2d Cir. 2012). **The state, in its role as regulator, was entitled to ensure that pharmacists were “professionally qualified to engage in the particular specialty occupation,”** but states could not determine that a “certain subclass of immigrants is not qualified for licensure merely because of their immigration status.” *Id.*, (emphasis added). *The failure to tailor the licensing scheme to a legitimate state interest was fatal to the law.*

CS for HB 1 (STA) would likely suffer a similar fate to the statutes challenged in *Torao Takahashi* and *Dandamudi*. No one would seriously suggest that one's immigration status closely relates to a driver's fitness to drive safely on the roads of Alaska.

One might also note the emphasis in both *Torao Takahashi* and *Dandamudi* on the right of individuals, **including non-citizens**, to earn a living. If the state denies driver's licenses or makes maintaining a driver's license procedurally cumbersome to legal immigrants, such a policy impairs the ability of those parties to maintain work. Many occupations directly require that a person maintain a driver's license, while in other cases driving is a practical necessity, as the commute to work would otherwise become difficult or expensive.

Among the unique provisions of the Alaska Equal Protection clause is the declaration that all people have a "natural right to life, liberty, the pursuit of happiness, and the *enjoyment of the rewards of their own industry*." Alaska Const., Art. I, Sec. 1 (emphasis added). To the extent denial of or limitations on a driver's license tends to thwart legal immigrants in finding or maintaining employment, the courts will question whether CS for HB 1 (STA) unreasonably and inequitably restricts the right to the rewards of one's own industry. See *Alaska Civil Liberties Union v. State*, 122 P.3d 781, 794 (Alaska 2005).

#### **Equal Protection and Due Process Issues**

CS for HB 1 (STA) additionally raises issues regarding violation of both federal and Alaska standards for equal protection. See, e.g., *State, Dep't of Revenue v. Andrade*, 23 P.3d 58, 78 (Alaska 2001) (noting that both sides conceded, and the court held, that an earlier regulation barring *all* legal aliens from obtaining money from the permanent fund violated equal protection). That driving may be considered a privilege and not a right is immaterial; **the denial to non-citizens of certain state benefits, including financial assistance for education and certain welfare benefits, has been ruled unconstitutional.** *Richardson*, 403 U.S. at 375-76; *Nyquist v. Mauclet*, 432 U.S. 1, 11-12 (1973).

**Assuming that the statute's intended meaning is that some categories of non-citizens should be forced to renew their licenses more frequently than citizens, the use of immigration status, or alienage, as a classification violates equal protection.**

**We also note that the Committee Substitute passed out of the House State Affairs Committee appears to be even more onerous than the original Bill, in that it deletes language explicitly allowing renewal by mail. It is regrettable that the Committee Substitute seemingly imposes an even greater burden on lawful immigrants, who may be working in positions where the requirement to miss work for no reason other than an administrative renewal of a license constitutes a not insignificant burden.**

Moreover, the Alaska Supreme Court has emphasized the status of driver's licenses as "an important property interest." *Champion v. Department of Public Safety*, 721 P.2d 131, 133 (Alaska 1986). A driver must receive meaningful due process before a "driver's license[ ] may be revoked or suspended." *Javed v. Department of Public Safety*, 921 P.2d 620, 622 (Alaska 1996) (citations omitted). While most due process cases relate to revocation or suspension of a

driver's license, rather than issuance, given the technical legal nature of the terms by which the license is revoked, a court might look at this rule as requiring a substantial and meaningful hearing, including a court hearing, to determine the immigration status of the individual. ***Designating a license for early and automatic expiration is not functionally different from suspending or revoking the license.***

Thus, requiring or allowing employees of the Division of Motor Vehicles to attempt to assess someone's immigration status would likely not comport with due process. Moreover, the implications of a due process challenge on this issue would merely heighten the pre-emption argument that the bill as a whole is invalid, as **the statute essentially requires state officials to assess independently a licensee's federal immigration status. That function is neither one that DMV employees are well-equipped to do, nor one that Congress has delegated to them.**

Given the lack of expertise of state officials in the federal immigration arena, the "risk of error" in assessing whether someone is a legal immigrant and how long they may legally stay in the United States would seem to be high. Such "risk of error" would invalidate an automatic scheme of license revocation. *City of Redmond v. Moore*, 91 P.3d 875, 881 (Wash. 2004).

Additionally, the Committee may wish to consider the potential language proficiency issues of some legal immigrants and their lack of familiarity with the legal system. ***An immigrant who innocently misses a re-registration deadline, and is then found guilty of driving on an expired license, could have that conviction hamper their continued efforts to remain in the country or to become a citizen or permanent resident.***

#### **Procedural Issues: Departmental Regulations, Scope of "Indefinite"**

A further problem with CS for HB 1 (STA) is that it dictates an outcome, without explaining a method. The bill leaves up to regulation by the Department *how* the duration of the individual's stay is determined. However, Alaska state administrative agencies have no identified expertise in determining immigration status, and the courts have noted the inability of the states to do so, as **"the structure of the immigration statutes makes it impossible for the State to determine which aliens are entitled to residence, and which eventually will be deported."** *Plyler*, 457 U.S. at 236 (Blackmun J., concurring); *id.* at 226.

The duration of permitted stay is, in some cases, hard for a lay person unfamiliar with immigration law to determine. **For instance, a non-citizen in Alaska for educational reasons may not be limited in the terms of her stay to the date listed on her visa, but until her educational program is complete.** U.S. Dep't of State, Student Visas (A student "may stay [in the United States] as long as [she is] a full time student, even if the F-1 visa in [her] passport expires while [she is] in the United States.") at [http://travel.state.gov/visa/temp/types/types\\_1268.html#14](http://travel.state.gov/visa/temp/types/types_1268.html#14). A DMV employee unfamiliar with immigration law may incorrectly assume that the length of permitted stay is simply until

whatever date is on the individual's visa. A hearing officer will not have sufficient knowledge of immigration law to correct such errors on review, ***resulting in simple licensing matters turning into lengthy litigation.*** Some non-citizens legally present in the United States may lose their licenses because they cannot afford legal representation to demonstrate the permitted duration of their stay and because they cannot explain the intricacies of immigration law to DMV employees.

Without a fixed system for determining the immigration status of driver's license applicants, the uncertainty of the administrative determination could impose unreasonable suspicion on those who "look" or speak "differently." A better course is for the state to leave determination of immigration status to the unified federal system, **rather than enacting legislation and eventual regulations that put admittedly legal immigrants under a pall of suspicion.**

### **Conclusion**

We hope that the Judiciary Committee will note the multiple constitutional infirmities with the proposed language in CS for HB 1 (STA), and take note of the negative policy implications therein.

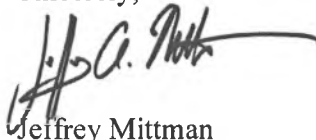
While the ACLU of Alaska **does not contest the State's ability and duty to regulate the safety of our roads**, as drafted, **CS FOR HB 1 (STA) goes far outside this permissible sphere, and imposes real, unnecessary, and regrettable burdens on lawful immigrants.**

The issues raised above present substantial Constitutional problems and would entangle the state in lengthy, costly, and needless litigation, should CS for HB 1 (STA) pass as currently written.

Please feel free to contact the undersigned should you require any additional information. Again, we are happy to reply to any questions that may arise either through written or verbal testimony, or to answer informally any questions which Members of the Committee may have.

Thank you again for the opportunity to share our concerns.

Sincerely,



Jeffrey Mittman  
*Executive Director*  
ACLU of Alaska

cc: Representative Neal Foster, [Rep.Neal.Foster@akleg.gov](mailto:Rep.Neal.Foster@akleg.gov)

House Judiciary Committee  
*Constitutional Analysis of CS for H.B. 1 (STA)*  
February 15, 2013  
Page 7

Representative Max Gruenberg, [Rep.Max.Gruenberg@akleg.gov](mailto:Rep.Max.Gruenberg@akleg.gov)  
Representative Gabrielle LeDoux, [Rep.Gabrielle.LeDoux@akleg.gov](mailto:Rep.Gabrielle.LeDoux@akleg.gov)  
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January 28, 2013

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BRIAN SPARKS, Sitka  
JUNE PINNELL-STEPHENS, Fairbanks  
TONY STRONG, Douglas

EMMA HILL, Anchorage  
STUDENT ADVISOR

The Honorable Bob Lynn, Chair  
The Honorable Wes Keller, Vice-Chair  
House State Affairs Committee  
Alaska State House of Representatives  
State Capitol, Room 106  
Juneau, AK 99801

*via email:*

[Rep.Bob.Lynn@akleg.gov](mailto:Rep.Bob.Lynn@akleg.gov)

[Rep.Wes.Keller@akleg.gov](mailto:Rep.Wes.Keller@akleg.gov)

**Re: House Bill 1 - Relating to Issuance of Driver's Licenses**  
**Constitutional Infirmities**

Chair Lynn, Vice-Chair Keller:

Thank you for the opportunity to submit written testimony regarding House Bill 1, Relating to Issuance of Driver's Licenses.

The American Civil Liberties Union of Alaska represents thousands of members and activists throughout the State of Alaska who seek to preserve and expand individual freedoms and civil liberties guaranteed under the United States and Alaska Constitutions. In that regard, we appreciate the opportunity to provide the Committee with information highlighting constitutional infirmities with the proposed legislation.

We would be happy to work with you or the Committee to answer any questions you might have.

### **Purpose of Driver's License, and Federal Pre-Emption**

A driver's license's "primary purpose is to allow its bearer lawfully to drive a car." *U.S. v. Campos-Serrano*, 404 U.S. 293, 299 (1971). **It is not intended as a document to relate to one's immigration status.**

HB 1 would require the State of Alaska both to determine *whether* someone is legally present in the country and to speculate on *how long* that individual may stay. This determination implicates the Supremacy Clause of the United States Constitution, which guarantees that **federal law will supersede state law in the areas of immigration.** "The Federal Government has broad constitutional powers in determining what aliens shall be admitted to the United States, the period they may remain, regulation of their conduct before naturalization, and the terms and conditions of their naturalization. Under the Constitution the states are granted no such powers; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states. *State laws which impose discriminatory burdens upon the entrance or residence of aliens lawfully within the United States conflict with this constitutionally derived federal power to regulate immigration, and have accordingly been held invalid.*" *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (citations omitted) (emphasis added).

The once-a-year requirement to renew a driver's license for those present for an indefinite period of time bears a striking similarity to the annual registration requirement for legal immigrants overturned in *Hines v. Davidowitz*, 312 U.S. 52, 59-60 (1941). In *Hines*, legal aliens were required to obtain a Pennsylvania identification card, renewed every year, which had to be shown, among other purposes, "as a condition precedent to registering a motor vehicle in his name or obtaining a license to operate one." *Id.* at 59. *The Pennsylvania identification requirement was invalidated, as Congress had reserved entirely to itself, or "occupied the field" of, the management of aliens within the borders of the United States. Id.*, (emphasis added).

Last year, the United States Supreme Court reaffirmed the logic of the *Hines* decision by rejecting an Arizona law which punished as a misdemeanor the failure of any legal immigrant to carry an "alien registration document," as the Court found that the federal government had the exclusive authority to register non-citizens. *Arizona v. United States*, 132 S. Ct. 2492, 2502 (2012). *HB 1 would essentially make state driver's licenses into "alien registration documents" used in tracking the legal status of non-citizens by the state government, which is not a proper role for the state of Alaska, nor among the traditional "police powers" of state governments.*

The United States Supreme Court has even held that some state laws relating exclusively to *undocumented immigrants* may violate the Supremacy Clause, where the regulation does not clearly serve legitimate state interests. *Plyler v. Doe*, 457 U.S. 202, 226-30 (1982) (overturning a Texas policy of not reimbursing public school districts for the costs associated with teaching

undocumented students). Further, various federal statutes manifest intent to prohibit discrimination against people on the basis of immigration status. *See, e.g.*, 8 U.S.C.A. § 1324b.

These cases and statutes indicate that – if enacted – a court could determine that HB 1 violates the Supremacy Clause.

### **Legislation Directed at Immigrants: Suspect Classification**

**Generally, regulations explicitly directed at legal immigrants are considered suspect classifications, like distinctions based on race and nationality.** *Graham v. Richardson*, 403 U.S. 365, 372 (1971). *The State of Alaska may not impose a special condition of driver's license renewal on legal immigrants, for similar reasons as it could not impose such conditions on drivers of a certain race, sex, or religion.*

HB 1, if enacted as drafted, would regulate the issuance of essential identification to legal immigrants, in a manner discriminatory towards those legal immigrants and potentially quite burdensome. Some immigrants may have short-term visas which are periodically renewed. The State of Alaska would impose unreasonable burdens on those immigrants by mandating that they also renew their driver's licenses each time they obtain a new visa, *for reasons having nothing to do with the fitness of the individual to drive a car.*

In an earlier case, the United States Supreme Court rejected state efforts to limit the issuance of a fishing license only to those eligible for citizenship. “[T]he power of a state to apply its laws exclusively to its alien inhabitants as a class is confined within narrow limits.” *Torao Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, 420 (1948). The Court rejected the notion that a “state can adopt one or more of the same [federal immigration] classifications to prevent lawfully admitted aliens within its borders from earning a living in the same way that other state inhabitants earn their living.” *Id.* at 418-19.

In a recent case, the federal appeals court for the Second Circuit struck down a law prohibiting non-immigrant aliens from obtaining licenses to work as pharmacists. *Dandamudi v. Tisch*, 686 F.3d 66, 80 (2d Cir. 2012). **The state, in its role as regulator, was entitled to ensure that pharmacists were “professionally qualified to engage in the particular specialty occupation,” but states could not determine that a “certain subclass of immigrants is not qualified for licensure merely because of their immigration status.”** *Id.*, (emphasis added). *The failure to tailor the licensing scheme to a legitimate state interest was fatal to the law.*

HB 1 would likely suffer a similar fate to the statutes challenged in *Torao Takahashi* and *Dandamudi*. No one would seriously suggest that one's immigration status closely relates to a driver's fitness to drive safely on the roads of Alaska.

One might also note the emphasis in both *Torao Takahashi* and *Dandamudi* on the right of individuals, **including non-citizens**, to earn a living. If the state denies driver's licenses or makes maintaining a driver's license procedurally cumbersome to legal immigrants, such a policy impairs the ability of those parties to maintain work. Many occupations directly require that a person maintain a driver's license, while in other cases driving is a practical necessity, as the commute to work would otherwise become difficult or expensive.

Among the unique provisions of the Alaska Equal Protection clause is the declaration that all people have a "natural right to life, liberty, the pursuit of happiness, and the *enjoyment of the rewards of their own industry*." Alaska Const., Art. I, Sec. 1 (emphasis added). To the extent denial of or limitations on a driver's license tends to thwart legal immigrants in finding or maintaining employment, the courts will question whether HB 1 unreasonably and inequitably restricts the right to the rewards of one's own industry. See *Alaska Civil Liberties Union v. State*, 122 P.3d 781, 794 (Alaska 2005).

#### **Equal Protection and Due Process Issues**

HB 1 additionally raises issues regarding violation of both federal and Alaska standards for equal protection. See, e.g., *State, Dep't of Revenue v. Andrade*, 23 P.3d 58, 78 (Alaska 2001) (noting that both sides conceded, and the court held, that an earlier regulation barring *all* legal aliens from obtaining money from the permanent fund violated equal protection). That driving may be considered a privilege and not a right is immaterial; **the denial to non-citizens of certain state benefits, including financial assistance for education and certain welfare benefits, has been ruled unconstitutional.** *Richardson*, 403 U.S. at 375-76; *Nyquist v. Mauclet*, 432 U.S. 1, 11-12 (1973).

**Assuming that the statute's intended meaning is that some categories of non-citizens should be forced to renew their licenses more frequently than citizens, the use of immigration status, or alienage, as a classification violates equal protection.**

Moreover, the Alaska Supreme Court has emphasized the status of driver's licenses as "an important property interest." *Champion v. Department of Public Safety*, 721 P.2d 131, 133 (Alaska 1986). A driver must receive meaningful due process before a "driver's license[ ] may be revoked or suspended." *Javed v. Department of Public Safety*, 921 P.2d 620, 622 (Alaska 1996) (citations omitted). While most due process cases relate to revocation or suspension of a driver's license, rather than issuance, given the technical legal nature of the terms by which the license is revoked, a court might look at this rule as requiring a substantial and meaningful hearing, including a court hearing, to determine the immigration status of the individual. ***Designating a license for early and automatic expiration is not functionally different from suspending or revoking the license.***

Thus, requiring or allowing employees of the Division of Motor Vehicles to attempt to assess someone's immigration status would likely not comport with due process. Moreover, the implications of a due process challenge on this issue would merely heighten the pre-emption argument that the bill as a whole is invalid, as **the statute essentially requires state officials to assess independently a licensee's federal immigration status. That function is neither one that DMV employees are well-equipped to do, nor one that Congress has delegated to them.**

Given the lack of expertise of state officials in the federal immigration arena, the "risk of error" in assessing whether someone is a legal immigrant and how long they may legally stay in the United States would seem to be high. Such "risk of error" would invalidate an automatic scheme of license revocation. *City of Redmond v. Moore*, 91 P.3d 875, 881 (Wash. 2004).

Additionally, the Committee may wish to consider the potential language proficiency issues of some legal immigrants and their lack of familiarity with the legal system. ***An immigrant who innocently misses a re-registration deadline, and is then found guilty of driving on an expired license, could have that conviction hamper their continued efforts to remain in the country or to become a citizen or permanent resident.***

#### **Procedural Issues: Departmental Regulations, Scope of "Indefinite"**

A further problem with HB 1 is that it dictates an outcome, without explaining a method. The bill leaves up to regulation by the Department *how* the duration of the individual's stay is determined. However, Alaska state administrative agencies have no identified expertise in determining immigration status, and the courts have noted the inability of the states to do so, as **"the structure of the immigration statutes makes it impossible for the State to determine which aliens are entitled to residence, and which eventually will be deported."** *Plyler*, 457 U.S. at 236 (Blackmun J., concurring); *id.* at 226.

The duration of permitted stay is, in some cases, hard for a lay person unfamiliar with immigration law to determine. **For instance, a non-citizen in Alaska for educational reasons may not be limited in the terms of her stay to the date listed on her visa, but until her educational program is complete.** U.S. Dep't of State, Student Visas (A student "may stay [in the United States] as long as [she is] a full time student, even if the F-1 visa in [her] passport expires while [she is] in the United States.") at [http://travel.state.gov/visa/temp/types/types\\_1268.html#14](http://travel.state.gov/visa/temp/types/types_1268.html#14). A DMV employee unfamiliar with immigration law may incorrectly assume that the length of permitted stay is simply until whatever date is on the individual's visa. A hearing officer will not have sufficient knowledge of immigration law to correct such errors on review, ***resulting in simple licensing matters turning into lengthy litigation.*** Some non-citizens legally present in the United States may lose their licenses because they cannot afford legal representation to demonstrate the permitted duration of their stay and because they cannot explain the intricacies of immigration law to DMV employees.

Without a fixed system for determining the immigration status of driver's license applicants, the uncertainty of the administrative determination could impose unreasonable suspicion on those who "look" or speak "differently." A better course is for the state to leave determination of immigration status to the unified federal system, **rather than enacting legislation and eventual regulations that put admittedly legal immigrants under a pall of suspicion.**

### **Conclusion**

We hope that the State Affairs Committee will note the multiple constitutional infirmities with the proposed language in HB 1.

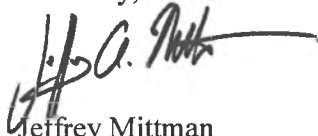
While the ACLU of Alaska **does not contest the State's ability and duty to regulate the safety of our roads**, as drafted, **HB 1 goes far outside this permissible sphere.**

The issues raised above present substantial Constitutional problems and would entangle the state in lengthy, costly, and needless litigation, should HB 1 pass as currently written.

Please feel free to contact the undersigned should you require any additional information. Again, we are happy to reply to any questions that may arise either through written or verbal testimony, or to answer informally any questions which Members of the Committee may have.

Thank you again for the opportunity to share our concerns.

Sincerely,



Jeffrey Mittman  
*Executive Director*  
ACLU of Alaska

cc: Representative Lynn Gattis, [Rep.Lynn.Gattis@akleg.gov](mailto:Rep.Lynn.Gattis@akleg.gov)  
Representative Shelley Hughes, [Rep.Shelley.Hughes@akleg.gov](mailto:Rep.Shelley.Hughes@akleg.gov)  
Representative Doug Isaacson, [Rep.Doug.Isaacson@akleg.gov](mailto:Rep.Doug.Isaacson@akleg.gov)  
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Representative Jonathan Kreiss-Tompkins, [Rep.Jonathan.Kreiss-Tompkins@akleg.gov](mailto:Rep.Jonathan.Kreiss-Tompkins@akleg.gov)

# Alaska State Legislature

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State Affairs Committee

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Transportation Committee  
Joint Armed Services Committee

**Finance Subcommittees**  
Administration  
Corrections  
Military and Veterans Affairs



*A Communication From*  
**REPRESENTATIVE BOB LYNN**  
**District 23 Anchorage**

**E-Mail: [Rep.Bob.Lynn@akleg.gov](mailto:Rep.Bob.Lynn@akleg.gov)**

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Anchorage, AK 99501-2133

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The following states have already codified the provisions of HB 1 into law:

Alabama, Arkansas, Arizona, California, Colorado, Delaware, District of Columbia, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, Montana, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming

In all, *thirty-six* states and the District of Columbia issue driver's licenses that are valid for no longer than the period of time that the driver is legally permitted to reside in the United States. It is important to note that under the provisions of HB 1, the DMV would only consider authorized length of stay for drivers who use an immigration document as their proof of identification when applying for their driver's license.

# NATIONAL IMMIGRATION LAW CENTER

## Overview of States' Driver's License Requirements

April 27, 2009

States that require a Social Security number (SSN) for a driver's license with no exceptions (1).	SD.
States that require an SSN for a driver's license, but have exceptions to that rule (50).	AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IA, IN, KS, KY, LA, MD, ME, MA, MN, MI, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, TN, TX, UT, VA, VT, WA, WV, WI, and WY.
States that have lawful presence requirements in the law (28).	AL, AZ, AR, CA, CO, FL, GA, ID, IN, KS, KY, LA, ME, MD, <sup>1</sup> MI, MN, MS, MO, MT, NJ, OK, PA, SC, SD, TN, VA, VT, WI, and WY.
States that have lawful presence requirements that are created by agency policy or the combination of documents required of driver's license applicants (18).	AK, CT, DE, DC, IL, IA, MA, <sup>2</sup> NE, NH, NV, NY, NC, ND, OH, OR, RI, TX, and WV.
States that don't have lawful presence requirements (4).	HI, NM, UT, <sup>3</sup> and WA.
States that accept the ITIN as an alternative to the SSN (5).	IL (in the case of religious objections) KY, NM, UT, <sup>4</sup> and WV.
States that accept the <i>matrícula consular</i> or other foreign ID card as a form of ID (7).	IN, MI (accepted on case-by-case basis), NE, NM, TX, UT, and WA.
States that require that the driver's license expire with an immigrant's visa or authorized stay in the U.S. (37).	AL, AR, AZ, CA, CO, DC, DE, GA, FL, IA, ID, IN, KY, LA, ME, MD, MI, MN, MO, MT, NJ, NV, NC, ND, OH, OK, PA, SC, SD, TN, TX, UT, VT, VA, WV, WI, and WY.

<sup>1</sup> Individuals holding licenses as of Apr. 19, 2009 will not have to prove lawful presence upon renewal; however licenses issued to such individuals will expire on July 1, 2015.

<sup>2</sup> Applicants with a license issued by Canada or Mexico can apply without demonstrating lawful presence.

<sup>3</sup> Driver's license applicants are required to prove lawful presence. Applicants unable to prove lawful presence receive a "driving privilege card."

<sup>4</sup> An ITIN may only be presented by those applying for a driving privilege card.



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202 216-0266 fax

## **Witness List**

### **HB 1 Driver's License** House Judiciary Committee

#### **Available On-Line for Questions**

Amy Erikson, Director of Alaska DMV  
(907)269-5551

Shelly Mellott, Deputy Director of Alaska DMV  
(907)269-5551

Erling Johansen, Assistant Attorney General  
907)269-5100

Dean Wauson, Supervisory Special Agent  
Immigration and Customs Enforcement (ICE)  
(907)271-3105



## Alaska Association of Chiefs of Police

February 2, 2013

The Honorable Robert Lynn  
Alaska State House of Representatives  
State Capitol, Rm. 108  
120 4th Street, Mail Stop 3100  
Juneau AK 99801-1182

Dear Representative Lynn,

In my capacity as President of the Alaska Association of Chiefs of Police, I am writing to express our support of House Bill 1, "An Act relating to issuance of drivers' licenses". Our Association is comprised of more than 100 law enforcement executives from all across Alaska, and we understand that the first step in enforcing law is to reliably identify the people with whom we have official contact, and we believe this legislation will be helpful in that regard.

We are pleased that HB 1 helps Alaska to join other states in recognizing the needs of alien residents to lawfully drive in the state, while at the same time limiting the likelihood that state issued identification can be used to legitimize their continued presence once their visa expires.

We look forward to working with you to insure that HB 45 is passed, and encourage you to contact our Executive Director, Kalie Klaysmat, at 907-394-5426 or by email at [kalie.klaysmat@aacop.org](mailto:kalie.klaysmat@aacop.org) should there be some way we can be of assistance in that regard.

Respectfully,

A handwritten signature in black ink, appearing to read "Tom Clemons", written over a horizontal line.

Chief Tom Clemons, President  
CC: Representatives Chenault, Hawker, and Johnson



February 15, 2013

**AMERICAN CIVIL  
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*via email:* [Rep.Wes.Keller@akleg.gov](mailto:Rep.Wes.Keller@akleg.gov)  
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**Re: CS House Bill 1 (STA) –  
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Constitutional Infirmities**

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**Assuming that the statute's intended meaning is that some categories of non-citizens should be forced to renew their licenses more frequently than citizens, the use of immigration status, or alienage, as a classification violates equal protection.**

**We also note that the Committee Substitute passed out of the House State Affairs Committee appears to be even more onerous than the original Bill, in that it deletes language explicitly allowing renewal by mail. It is regrettable that the Committee Substitute seemingly imposes an even greater burden on lawful immigrants, who may be working in positions where the requirement to miss work for no reason other than an administrative renewal of a license constitutes a not insignificant burden.**

Moreover, the Alaska Supreme Court has emphasized the status of driver's licenses as "an important property interest." *Champion v. Department of Public Safety*, 721 P.2d 131, 133 (Alaska 1986). A driver must receive meaningful due process before a "driver's license[ ] may be revoked or suspended." *Javed v. Department of Public Safety*, 921 P.2d 620, 622 (Alaska 1996) (citations omitted). While most due process cases relate to revocation or suspension of a

driver's license, rather than issuance, given the technical legal nature of the terms by which the license is revoked, a court might look at this rule as requiring a substantial and meaningful hearing, including a court hearing, to determine the immigration status of the individual. *Designating a license for early and automatic expiration is not functionally different from suspending or revoking the license.*

Thus, requiring or allowing employees of the Division of Motor Vehicles to attempt to assess someone's immigration status would likely not comport with due process. Moreover, the implications of a due process challenge on this issue would merely heighten the pre-emption argument that the bill as a whole is invalid, as **the statute essentially requires state officials to assess independently a licensee's federal immigration status. That function is neither one that DMV employees are well-equipped to do, nor one that Congress has delegated to them.**

Given the lack of expertise of state officials in the federal immigration arena, the "risk of error" in assessing whether someone is a legal immigrant and how long they may legally stay in the United States would seem to be high. Such "risk of error" would invalidate an automatic scheme of license revocation. *City of Redmond v. Moore*, 91 P.3d 875, 881 (Wash. 2004).

Additionally, the Committee may wish to consider the potential language proficiency issues of some legal immigrants and their lack of familiarity with the legal system. *An immigrant who innocently misses a re-registration deadline, and is then found guilty of driving on an expired license, could have that conviction hamper their continued efforts to remain in the country or to become a citizen or permanent resident.*

#### **Procedural Issues: Departmental Regulations, Scope of "Indefinite"**

A further problem with CS for HB 1 (STA) is that it dictates an outcome, without explaining a method. The bill leaves up to regulation by the Department *how* the duration of the individual's stay is determined. However, Alaska state administrative agencies have no identified expertise in determining immigration status, and the **courts have noted the inability of the states to do so, as "the structure of the immigration statutes makes it impossible for the State to determine which aliens are entitled to residence, and which eventually will be deported."** *Plyler*, 457 U.S. at 236 (Blackmun J., concurring); *id.* at 226.

The duration of permitted stay is, in some cases, hard for a lay person unfamiliar with immigration law to determine. **For instance, a non-citizen in Alaska for educational reasons may not be limited in the terms of her stay to the date listed on her visa, but until her educational program is complete.** U.S. Dep't of State, Student Visas (A student "may stay [in the United States] as long as [she is] a full time student, even if the F-1 visa in [her] passport expires while [she is] in the United States.") at [http://travel.state.gov/visa/temp/types/types\\_1268.html#14](http://travel.state.gov/visa/temp/types/types_1268.html#14). A DMV employee unfamiliar with immigration law may incorrectly assume that the length of permitted stay is simply until

whatever date is on the individual's visa. A hearing officer will not have sufficient knowledge of immigration law to correct such errors on review, ***resulting in simple licensing matters turning into lengthy litigation.*** Some non-citizens legally present in the United States may lose their licenses because they cannot afford legal representation to demonstrate the permitted duration of their stay and because they cannot explain the intricacies of immigration law to DMV employees.

Without a fixed system for determining the immigration status of driver's license applicants, the uncertainty of the administrative determination could impose unreasonable suspicion on those who "look" or speak "differently." A better course is for the state to leave determination of immigration status to the unified federal system, **rather than enacting legislation and eventual regulations that put admittedly legal immigrants under a pall of suspicion.**

### **Conclusion**

We hope that the Judiciary Committee will note the multiple constitutional infirmities with the proposed language in CS for HB 1 (STA), and take note of the negative policy implications therein.

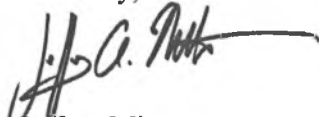
While the ACLU of Alaska **does not contest the State's ability and duty to regulate the safety of our roads**, as drafted, **CS FOR HB 1 (STA) goes far outside this permissible sphere, and imposes real, unnecessary, and regrettable burdens on lawful immigrants.**

The issues raised above present substantial Constitutional problems and would entangle the state in lengthy, costly, and needless litigation, should CS for HB 1 (STA) pass as currently written.

Please feel free to contact the undersigned should you require any additional information. Again, we are happy to reply to any questions that may arise either through written or verbal testimony, or to answer informally any questions which Members of the Committee may have.

Thank you again for the opportunity to share our concerns.

Sincerely,



Jeffrey Mittman  
*Executive Director*  
ACLU of Alaska

cc: Representative Neal Foster, [Rep.Neal.Foster@akleg.gov](mailto:Rep.Neal.Foster@akleg.gov)

House Judiciary Committee  
*Constitutional Analysis of CS for H.B. 1 (STA)*  
February 15, 2013  
Page 7

Representative Max Gruenberg, [Rep.Max.Gruenberg@akleg.gov](mailto:Rep.Max.Gruenberg@akleg.gov)  
Representative Gabrielle LeDoux, [Rep.Gabrielle.LeDoux@akleg.gov](mailto:Rep.Gabrielle.LeDoux@akleg.gov)  
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Representative Lance Pruitt, [Rep.Lance.Pruitt@akleg.gov](mailto:Rep.Lance.Pruitt@akleg.gov)

From:

Glenn M. Prax  
1015 Meadow Rue  
North Pole, AK 99705

To:

The Honorable Wes Keller, Chair  
House Judiciary Committee  
Alaska State House of Representatives  
State Capitol, Room 120  
Juneau, Alaska 99801

RE: HB1 "An Act Related to the Issuance of Drivers' Licenses"

Chairman Keller;

I am writing to encourage the Judiciary Committee to ask the sponsors of HB1 to provide a more compelling case for the public benefits of the bill before scheduling it for committee consideration and public hearing, because it appears to me that HB1 will do little – if anything – to address concerns about 'undocumented aliens' while exposing the public treasury to the potential cost of unproductive litigation and maintaining the state bureaucracy.

I have no doubt that this bill is well intended. On the surface, it simply attempts to make the state divers license regulations support national immigration policy and it evokes images of doing something to discourage the hordes of people sneaking across the border with illicit drugs or to take jobs away from Americans.

However, HB1 is not targeting that group of people. It literally targets those who take the time to obtain official permission to enter the country (ostensibly for some legitimate purpose) and present that documentation to seek official permission to drive on our roads. Those who don't bother to seek permission to enter the country or surreptitiously overstay their welcome probably either won't bother to obtain a drivers license or will find some way to circumvent the detection mechanism.

Furthermore, A license is understood to be revoked if it is used in furtherance of and illegal activity (like being an undocumented alien), so HB1 seems unable to serve a practical purpose.

The documentation supporting HB1 on BASIS only states that 37 other states have similar laws. There is no indication of a specific problem that needs to be addressed nor arguments presented to explain how the statutes proposed by HB1 will improve the lives of Alaskans. The fiscal note attached to the bill states that there will be no cost and the Department of Law testified that they found no constitutional issues.

However, a more thorough analysis from the ACLU that is also posted on BASIS presents considerable evidence of potential conflicts between this bill and federal immigration law that could lead to litigation,

especially in the case of foreigners who are in the country for an indeterminate stay. They also observed that it would be difficult to develop regulations to implement the law against someone who is authorized to stay in the country for an indeterminate period of time.

The State Affairs Committee seemed only to be concerned with the bureaucratic mechanics of implementing this bill. They did not consider whether there was a real public need for the bill or whether it would effectively address that need. (The best practice recommendation of an organization of bureaucrats does not constitute a public need.)

Perhaps the DMV will not specifically ask for funding to develop and administer the provisions of this bill, but the administrative cost of implementing any policy change in any large organization is always considerable. It is reasonable to assume at least several weeks of their collective time will be spent on developing and approving the regulations and then performing the necessary training, and there will be an ongoing commitment of additional time to administer the program. The public has already paid a considerable amount to advance this bill through the legislative process. The real cost of implementing this bill could run into the high tens if not hundreds of thousands of dollars.

Furthermore, the legislature must weigh the risk and expense of a legal challenge against any public benefit that might ensue. In the case of HB1, no evidence of any public benefit has been presented; so even if the risk of litigation is low and the probability of prevailing is high, there is no point in risking any public money at least until someone makes a credible case for real and practical public benefit from passing this bill.

As the ACLU pointed out, the purpose of a drivers' license is to enhance motoring safety – not to augment national immigration policy or even to serve as official identification.

An unintended consequence of HB1 is to confuse the purpose of the state drivers' license and move the state of Alaska incrementally closer to efforts to establish a national ID card - which the public and the legislature have previously spoken against.

It also imposes unnecessary hassle on legitimate foreign guests visiting our state without providing practical protection against the perceived ill-effects of undocumented immigration to our country or making our roads any safer.

Therefore, I respectfully ask the Judiciary Committee to ask the sponsors of HB1 to prepare a more compelling case for imposing these regulations on the public to present to the committee, or simply to let the bill die for lack of real need.

For Liberty,

Glenn M. Prax  
907-378-5667

## 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/?vgnnextoid=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

**Margaret Stock**



Counsel to the Firm, [Bio](#) | [VCard](#)  
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**cants.** Notwithstanding another provision of this chapter and in addition to other requirements, a person applying for a new license after expiration of the person's license on reaching 21 years of age under AS 28.15.099 must pass a test developed and administered by the department regarding alcohol and drug awareness and safety and the laws relating to alcohol, drugs, and driving before the license may be issued or renewed. (§ 1 ch 118 SLA 2008)

**Effective dates.** — Section 1, ch. 118, SLA 2008, which enacted this section, became effective October 21, 2008.

*Sec. 28.15.090. Access to license. [Repealed, § 19 ch 178 SLA 1978.]*

**Sec. 28.15.091. Department may require re-examination.** If the department has good cause to believe that a licensed driver is incompetent or otherwise not qualified to be licensed, it may upon written notice of at least 10 days to the licensee require the licensee to submit to an examination. Upon conclusion of the examination, the department shall take action as may be appropriate and may cancel the license of the person, or may issue a restricted license under AS 28.15.121, or restrict the type or class of vehicles that the person may drive. If the licensee refuses or neglects to submit to examination, the department may suspend the driver's license until the licensee complies with the requirements of re-examination. (§ 19 ch 178 SLA 1978)

**Collateral references.** — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 123.

**Sec. 28.15.099. Expiration and renewal of license issued to person under 21 years of age.** Notwithstanding another provision of this chapter, a driver's license issued to a person under 21 years of age expires 90 days after the person reaches 21 years of age. (§ 2 ch 118 SLA 2008)

**Effective dates.** — Section 2, ch. 118, SLA 2008, which enacted this section, became effective October 21, 2008.

*Sec. 28.15.100. Duplicates. [Repealed, § 19 ch 178 SLA 1978.]*

**Sec. 28.15.101. Expiration and renewal of driver's license.** (a) Except as otherwise provided in this chapter, a driver's license expires on the licensee's birthday in the fifth year following issuance of the license. A license may be renewed within one year of its expiration upon proper application, payment of the required fee, and except when a license is renewed under (c) of this section, successful completion of a test of the licensee's eyesight.

(b) The department may defer the expiration of the driver's license of a person who is outside the state under terms and conditions that the department shall prescribe by regulation.

(c) A driver's license may be renewed by mail if the licensee complies with (a) of this section, except that a license may not be renewed by mail if

- (1) the most recent renewal of the applicant's license was by mail; or
- (2) the applicant is 69 years of age or older on the expiration date of the driver's license being renewed. (§ 19 ch 178 SLA 1978; am §§ 1, 2 ch 32 SLA 1988; am § 6 ch 6 FSSLA 1996)

**Collateral references.** — 60 C.J.S., Motor Vehicles, § 279.



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL


## Department of Administration

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### Memorandum

**To:** Representative Bob Lynn  
Attn: Forrest Wolfe

**From:** Amy Erickson   
Director  
Division of Motor Vehicles

**Date:** March 12, 2013

**Subject:** HB 1, "An Act relating to issuance of drivers' licenses."

HB 1 adds a new section to Alaska Statute to allow the DMV to issue a driver's license to expire in conjunction with the expiration date of an individual's lawful stay in the United States. Currently, the DMV issues driver's licenses for five years even if a person's documentation authorizes their stay for less than five years. HB 1 also provides that the DMV may issue a one-year license if a person is authorized to stay in the United States indefinitely.

You asked me to comment on correspondence from Ms. Margaret Stock, an Anchorage lawyer, to Mr. Ernest Prax of Representative Keller's staff. I am pleased to comment on the items in bold, which Ms. Stock believes will "create significant problems" for the Division of Motor Vehicles (DMV).

**The bill would require DMV to become expert in more than 80 different types of non-immigrant and other statuses.** HB 1 does not change the manner in which DMV conducts its business. The DMV inspects documents each and every day as part of its normal business practices, and the length of time a person is authorized to stay in the United States is clearly marked on the documents. When a person's status changes, they are provided documentation to support the change, and the DMV issues a license based on that documentation.

**The DMV does not currently employ any immigration or citizenship attorneys who can keep up on the constant changes in federal laws, regulations, and policies.** It is not necessary for the DMV to employ immigration or citizenship attorneys to keep up with federal changes. If

the DMV is unable to determine exactly when a person's documents expire, or their stay is indeterminate, the DMV will issue a one-year license.

**The bill will lead to expensive litigation.** The DMV is unable to find evidence of the amount of or expense of any litigation as a result of language contained in HB 1.

**The bill would have the Alaska DMV enforcing federal immigration law.** The DMV will not be called upon to enforce federal immigration law. The DMV relies on documents provided by the federal government to individuals, and makes determinations solely on the documents provided.

**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.** The DMV issues licenses based on the documents provided. Having an immigration lawyer "explain" status will not suffice for purposes of issuing a driver's license. If a person is legal, and has documentation, the DMV will issue a license for the duration of their lawful stay, or for one year if their stay is indeterminate.

**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 federal workers.** While the DMV does have the ability to access the Systematic Alien Verification for Entitlements (SAVE) system, it is very costly, and, therefore, not used at this time. DMV employees go through weeks of training to read and decipher documents, and when questions arise, DMV seeks counsel from local U.S. Citizenship and Immigration Service (USCIS), and Immigration and Customs Enforcement (ICE).

## LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
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### MEMORANDUM

March 6, 2013

**SUBJECT:** HB1 - Drivers' Licenses of Less than Five Years Duration  
(Work Order No. 28-LS0008\O)

**TO:** Representative Bob Lynn  
Attn: Forrest Wolfe

**FROM:** Kathleen Straubach  
Legislative Counsel

You have asked me to review and comment on correspondence from Margaret Stock to Mr. Prax of Representative Keller's staff. I spoke with Mr. Wolfe a couple of days after the bill's first hearing on February 18, and advised that I could not provide assistance with regard to Ms. Stock's assertions about the practical difficulties the bill may cause for the division of motor vehicles, or the difficulties that might be encountered with respect to interaction with federal immigration officials and regulations. We agreed that the best sources of such information are the DMV and federal immigration officials. I believe Mr. Wolfe has already communicated with these agencies. We also discussed the fact that some of the legal issues require an analysis of the rationale for the legislation, which might involve the presentation of factual information, to the extent that it has not already been provided.

While I am not an expert in immigration, I can address, at least briefly, three legal issues set out in Ms. Stock's correspondence.

The bill provides that the Department of Administration may issue a driver's license to a person who has permission to be in the United States for less than five years, for the period of time the permission has been granted. It also provides that a person with permission to stay in the United States for an indefinite period may receive a license annually.

1. **Equal Protection.** The first question is whether a driver's license applicant who has permission to be in the United States for an indefinite period and receives a license that requires an annual renewal, is being treated less favorably than a person whose permission to be in the country is for a definite period, who receives a license that is for that definite period, to such a degree that the first applicant's right to equal protection of the laws is affected.

Challenges to government practices that draw distinctions between persons with differing legal statuses under federal immigration laws are usually reviewed by courts under the rationale basis standard. The Alaska Supreme Court has permitted the permanent fund dividend program to distinguish between immigrants in the U.S. with permission and those in the U.S. without permission, as rationally related to the program's aims under the Alaska and U.S. equal protection standards. *Cosio v. State*, 858 P.2d 621, 627 and 629 (Alaska 1993). See also *State v. Andrade*, 23 P.3d 58, 78 (Alaska 2001)(upholding the permanent fund statute's distinction between those who are admitted for permanent residence and those who are not, but noting the unconstitutionality of an expired regulation that appeared to improperly exclude persons who were not precluded by federal law from forming the intention to remain in the state); accord, *Carlson v. Reed*, 249 F. 3d 876, 882 - 83 (9th Cir. 2011) (upholding the distinction between legal permanent residents and those who are not eligible for permanent residence for the purpose of in-state college tuition).

However, in my opinion HB 1 does not actually attempt to draw distinctions among persons with differing statuses. A person with uncertain time limits could be a refugee seeking permanent residence, or a student who is not. Persons with specified periods of admission may have differing statuses as well. Each group is entitled to apply for and to receive a driver's license. The differing durations of licensing periods are not based on drawing improper distinctions among persons with differing immigration statuses, and thus it does not appear that there is an equal protection problem of the type identified in pages 1-2 of the correspondence.

2. **Litigation in Other States.** The correspondence also suggests that "the bill will lead to expensive litigation." I did not find any source of statistics on the amount of litigation, or its expense, nor of unreported activity in trial courts around the nation. In addition, I could not find any reported cases in which similar legislation has been overturned. The correspondence refers to an unreported case in a federal district court in New Hampshire as an example of such litigation. In that case, driver's license holders whose permission to be in the country was for an indeterminate period or for less than five years, sued because they were (1) required to travel to the state capital to renew their licenses and to stand in special lines, (2) issued temporary documents without photos, (3) treated as having requested duplicate licenses, (4) issued final licenses that had a special mark that might have indicated their immigration status, (5) required to meet more onerous standards with respect to residency and, (6) issued licenses for less than five years. *Fahy v. Commissioner*, 2006 WL 82705, at 1 - 4 (D. N.H. March 29, 2006). Some of the plaintiffs received licenses that were valid for less than one year. *Id.* The court enjoined the practice of issuing shorter temporary permits to noncitizens, but upheld the balance of the requirements, finding them in compliance with federal mandates, particularly with respect to identity verification under the federal REAL ID Act.<sup>1</sup> *Id.* at 16 - 17. In

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<sup>1</sup> Under AS 44.99.040, Alaska state agencies are not permitted to expend funds for compliance with the REAL ID Act, but DMV's identification requirements are largely consistent with its documentation requirements.

subsequent litigation of the case, the court determined that those persons with permanent status or federal identification indicating refugee or asylee status could not have the duration of their licenses tied to their status because neither the state's regulations nor the REAL ID law required it. *Fahy v. Commissioner*, 2006 WL 1764346, at 2 - 3 (D.N.H. June 26, 2006).<sup>2</sup>

One could argue that the *Fahy* case might stand for the proposition that treating citizens differently than noncitizens is a violation of federal equal protection standards. However, a reported circuit court decision upheld such a time limitation for certain driver's licenses. In *League of United Latin Am. Citizens v. Bredesen*, 500 F.3d 523 (6th Cir. 2007), the Sixth Circuit Court of Appeals upheld a Tennessee law that issued driving certificates, but not licenses or identification cards to persons whose status would not lead to permanent residence (immigrant status), finding that the different document imposed no real burden. *Id.* at 532. *Carlson v. Reed*, decided by the Ninth Circuit, which covers Alaska, also permits distinctions among persons with immigrant status and persons with temporary (nonimmigrant) status. These reported circuit court cases are probably more useful guidance than the New Hampshire case, which it must be said, approved harsh differential treatment in comparison to the conditions imposed by HB 1.

A higher standard of review applies when a government practice burdens a fundamental right based on alienage. However, if we examine the major cases in which a state government imposes a burden based on alien status, each one involves the deprivation of a significant right solely on the basis that the individual is not a citizen. *Toll v. Moreno*, 458 U.S. 1 (1982) (denial of in-state tuition for persons with long term status); *Plyler v. Doe*, 457 U.S. 202 (1982) (denial of right to an education for the children of persons unlawfully in the country); *Graham v. Richardson*, 403 U.S. 365 (1971) (denial of welfare benefits) *Takahashi v. Fish and Game Commission*, 334 U.S. 410 (1948) (deprivation of commercial fishing license); *Dandamudi v. Tisch*, 686 F. 3d 66 (2nd Cir. 2012) (deprivation of pharmacist licenses to persons with employment visas).<sup>3</sup>

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<sup>2</sup> In a third decision, the court noted, in granting the plaintiffs substantially less of the attorneys' fees than they requested, that the court's second ruling had not actually determined whether New Hampshire had engaged in unlawful practices. *Fahy v. Commissioner*, 2006 WL 3051774 at 2 (D.N.H. October 26, 2006).

<sup>3</sup> The Second Circuit applies a strict scrutiny standard of review for drawing distinctions among persons with varying immigration statuses, the Fifth and Sixth do not. *League of United Latin Am. Citizens v. Bredesen*, *id.* at 531 -32 (rationale basis test applied); *LeClerc v. Webb*, 419 F.3d 405, 422 (5th Cir. 2005) (persons with non-immigrant status could not sit for bar examination; rational basis test applied). In *Carlson*, the Ninth Circuit case, the court does not discuss the standard of review.

Representative Bob Lynn  
March 6, 2013  
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In my opinion, HB 1 does not deprive a person of a license or livelihood. The bill does not mandate special marks, separate locations, separate lines, nor temporary documents. The burden the bill imposes, a different licensing period, is less than that imposed in the cases discussed above. It is difficult to predict the outcome of litigation. Another court could handle the case in the manner that the *Fahy* court did, but it seems more likely that a federal court would review the bill in the manner of *League of United Latin Am. Citizens v. Bredesen, supra*, or *Carlson v. Reed, supra*. And while, Alaska's equal protection standards are more exacting than those imposed by the federal courts, the Alaska Supreme Court may find the bill similar to the law it upheld in *Andrade*.

**3. Administration of Federal Law.** The correspondence suggests that the bill would require the state to administer federal law. A state that attempts to do so can run afoul of the Supremacy Clause. *Arizona v. U.S.*, \_\_\_ U.S. \_\_\_, 132 S.Ct. 2492 (2012) (overturning state effort to conduct its own scheme of immigration enforcement); *Hines v. Davldowitz*, 312 U.S. 52 (1941) (striking down a state alien registration scheme); compare *Andrade*, 23 P.3d at 74. As I understand it, the Division of Motor Vehicles would not be determining the immigration status of driver's license applicants. The DMV would merely review the documents presented by the applicant to prove identity or residency, and, if the documents revealed an approved stay that was indeterminate or less than five years, it would issue the license for the duration of the approved stay or one year. I cannot speak to the relative difficulty of this review, but it does not appear to involve more effort than that required of all employers in the United States under the Immigration Reform and Control Act of 1986, 8 USC 1324a, which requires employers to determine the veracity of immigration documents and whether the documents authorize a person to work, facing the possibility of federal civil and criminal penalties if they fail.<sup>4</sup>

Please let me know if I can be of further assistance in this matter.

KJS:Ind  
13-126.Ind

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<sup>4</sup> See <http://www.uscis.gov/files/form/m-274.pdf>, which describes an employer's duties.

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/?vgnnexto id=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

**Margaret Stock**

