

HB

1

<TARGET><BILL>HB 1</BILL><SUBJECT>HB
1</SUBJECT><COMM>HSTA28</COMM></TARGET>

CS FOR HOUSE BILL NO. 1(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered:

Referred:

**Sponsor(s): REPRESENTATIVES LYNN, HAWKER, CHENAULT, AND JOHNSON, Olson, Millett,
Peggy Wilson, Keller, Isaacson**

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to issuance of drivers' licenses."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 *** Section 1.** AS 28.15.101 is amended by adding a new subsection to read:

4 (d) Under regulations adopted by the department, the department may issue to
5 a person a driver's license with a duration of less than five years if the person is
6 authorized to stay in the United States for less than five years or the period of
7 authorized stay is indefinite. The department shall issue the license for the period of
8 the authorized stay. If the period of authorized stay is indefinite, the department shall
9 issue the license with a validity of one year. The department may provide that a person
10 receiving a license with a duration of less than five years under this subsection may
11 renew the license without a renewal fee during a period of up to five years after first
12 issuance of the license.

Alaska State Legislature

**Chairman**

State Affairs Committee

Vice-Chair

Judiciary Committee

MemberTransportation Committee
Joint Armed Services Special Committee**Finance Subcommittees**Administration
Corrections
Military and Veterans Affairs**Session:**Alaska State Capitol, #108
Juneau, AK 99801-1182

Phone: (907) 465-4931

Fax: (907) 465-4316

Toll Free: (800) 870-4391

Interim:716 W. 4th Ave., #650
Anchorage, AK 99501-2133

Phone: (907) 269-0205

Fax: (907) 269-0207

A Communication From
REPRESENTATIVE BOB LYNN
District 23 Anchorage

FAX

To: Legal Services

Fax #: 465-2029From: Nancy Manly 465-2794 *Nmanly*
Alaska State Capitol, Room 108
Juneau, AK 99801-1182# of Pages (including cover): 1

Phone: 907-465-4931

Fax: 907-465-4316

Re HB 1 – 28-LS0008\C FINAL CS

1/29/2013

HB 1 Version C moved from the House State Affairs Committee with no changes. Please draft a FINAL CS. Thanks!



January 28, 2013

AMERICAN CIVIL
LIBERTIES UNION OF
ALASKA
1057 W. Fireweed, Suite 207
Anchorage, AK 99503
(907) 258-0044
(907) 258-0288 (fax)
WWW.AKCLU.ORG

OFFICERS AND DIRECTORS
DONNA J. GOLDSMITH, Anchorage
PRESIDENT

RICH CURTNER, Anchorage
VICE PRESIDENT

LLOYD EGGAN, Anchorage
TREASURER

JOSHUA HEMSATH, Eagle River
SECRETARY

WILLIE ANDERSON, Juneau
AFFIRMATIVE ACTION OFFICER

PAUL GRANT, Juneau
SCOTT HENDERSON, Anchorage
KATIE HURLEY, Wasilla
MARJORIE KAISER, Anchorage
MICHAEL KING, Anchorage
RACHEL MUIR, Dillingham
CONNIE OZER, Anchorage
GALEN PAINE, Sitka
STEPHANIE PAWLOWSKI, Anchorage
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

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. 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.

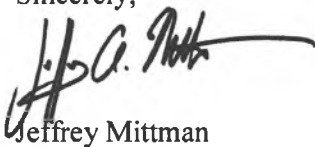
While the ACLU of Alaska **does not contest the State's ability and duty to regulate the safety of our roads**, as drafted, **HB 1 goes far outside this permissible sphere.**

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
Representative Shelley Hughes, Rep.Shelley.Hughes@akleg.gov
Representative Doug Isaacson, Rep.Doug.Isaacson@akleg.gov
Representative Charisse Millett, Rep.Charisse.Millett@akleg.gov
Representative Jonathan Kreiss-Tompkins, Rep.Jonathan.Kreiss-Tompkins@akleg.gov

SEAN PARNELL
GOVERNOR

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

LABOR & STATE AFFAIRS
1031 WEST 4th AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-6612
FAX: (907) 258-4978

January 28, 2013

Representative Bob Lynn
State Capitol Room 108
Juneau, Alaska 99801

Re: HB-1

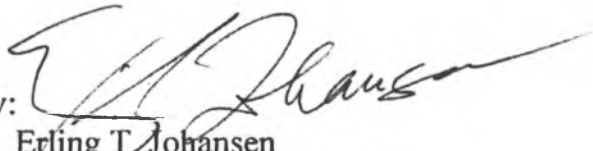
Dear Representative Lynn:

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

Bob Lynn Script

This bill simply enables the Department of Motor Vehicles to issue a driver's license for a period of less than five years for someone who has a legal presence in the United States for less than five years.

The way it is today, someone with a visa – a visitor to the USA – that expires in two weeks, can walk into a DMV, and get a driver's license that doesn't expire for five years. This bill simply links the duration of the driver's license to the duration of the visa, or any other legal presence document. That's just common sense.

If the legal presence document is for some indefinite or provisional period of time – like for a refugee or someone seeking asylum - the driver's license could be issued for one year, but could be renewed each year up to a period of five years, at no additional cost.

Similar legislation has been passed in many other states. Your favorable consideration of HB1 is respectfully requested. My staffer, Forest Wolfe, will explain further.

adopted

28-LS0008\C
Strasbaugh/Martin
1/23/13

CS FOR HOUSE BILL NO. 1()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

**Sponsor(s): REPRESENTATIVES LYNN, HAWKER, CHENAULT, AND JOHNSON, Olson, Millett,
Peggy Wilson**

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to issuance of drivers' licenses."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 *** Section 1. AS 28.15.101 is amended by adding a new subsection to read:**

4 (d) Under regulations adopted by the department, the department may issue to
5 a person a driver's license with a duration of less than five years if the person is
6 authorized to stay in the United States for less than five years or the period of
7 authorized stay is indefinite. The department shall issue the license for the period of
8 the authorized stay. If the period of authorized stay is indefinite, the department shall
9 issue the license with a validity of one year. The department may provide that a person
10 receiving a license with a duration of less than five years under this subsection may
11 renew the license without a renewal fee during a period of up to five years after first
12 issuance of the license.

Alaska State Legislature

Chairman
State Affairs Committee

Member
Vice-Chair, Judiciary Committee
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

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

Phone: (907) 465-4931
Fax: (907) 465-4316
Toll Free: (800) 870-4391

Interim:
716 W. 4th Ave., #650
Anchorage, AK 99501-2133

Phone: (907) 269-0205
Fax: (907) 269-0207

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.

Alaska State Legislature

Chairman
State Affairs Committee

Member
Vice-Chair, Judiciary Committee
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

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

Phone: (907) 465-4931
Fax: (907) 465-4316
Toll Free: (800) 870-4391

Interim:
716 W. 4th Ave., #650
Anchorage, AK 99501-2133

Phone: (907) 269-0205
Fax: (907) 269-0207

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.

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, ¹ 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, ² NE, NH, NV, NY, NC, ND, OH, OR, RI, TX, and WV.
States that don't have lawful presence requirements (4).	HI, NM, UT, ³ and WA.
States that accept the ITIN as an alternative to the SSN (5).	IL (in the case of religious objections) KY, NM, UT, ⁴ 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.

¹ 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.

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

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

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



NATIONAL
IMMIGRATION
LAW CENTER
www.nilc.org

LOS ANGELES (Headquarters)
3435 Wilshire Boulevard
Suite 2850
Los Angeles, CA 90010
213 639-3900
213 639-3911 fax

WASHINGTON, DC
1444 Eye Street, NW
Suite 1110
Washington, DC 20005
202 216-0261
202 216-0266 fax

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.

AAMVA DL/ID Security Framework

A Package of Decisions Based on Best Practices, Standards,
Specifications and Recommendations to Enhance Driver's License
Administration and Identification Security



American Association of
Motor Vehicle Administrators

DISCLAIMER:

AAMVA, a non-regulatory organization, uses its membership's expertise to develop standards, specifications and best practices to foster the enhancement of driver licensing administration and identification security.

AAMVA determined the need for a comprehensive framework of minimum requirements with enhanced recommendations to improve the quality, reliability, uniformity and security of the driver licensing process in North America.

Throughout this document, AAMVA uses the word "shall" where it believes all jurisdictions "need" to adhere to the proposed requirements for maximum effectiveness.

© February 2004

- Consistent name format (all staff, all jurisdictions use same format to enter and retrieve an individual's name).
- Reduction in manual processing and more automated search and matching decisions.
- Reduction in exception handling, and where necessary, simplified and clarified.

7.2 Licensing Noncitizens

Requirement #11: All jurisdictions that accept an immigration document as a source document shall tie the end-of-stay date to the expiration date of the driver's license/identification card (see Appendix "15-7.2-03 End of Stay and DL/ID Expiration Procedures").

Recommendation #5: All jurisdictions should not grant a photo driver's license/identification card to an undocumented immigrant (see Appendix "16-7.2-03 AAMVA Board of Directors Resolution 03-09: Position on Issuing Driver's Licenses to Undocumented Aliens").

The number of noncitizens (both legal and illegal) applying for a DL/ID has steadily increased in recent years. A documented immigrant may have one of several status classifications, which may cause confusion when he/she applies for a DL/ID. Immigration status and an immigrant's length-of-stay in the country have been identified as factors in national security. DL/ID issuance of immigrants must therefore be a consistent, accurate and secure process.

Noncitizens may be separated into two groups for the purposes of DL/ID issuance:

1. Documented immigrants with temporary status
2. Undocumented immigrants

Each group is discussed separately below in sections 7.2.1 and 7.2.2.

7.2.1 Documented Immigrants

Expiring the DL/ID on the end-of-stay (end of the visa) date requires:

- Original or certified immigration documents upon application.
- Issuance of the DL/ID with an expiration date that matches the lawful presence expiration date (end-of-stay date) or the jurisdiction's standard renewal cycle expiration date, whichever is shorter.
- Defined procedures for cases that require exception processing and management approval.

Detailed procedures for implementing the process are found in Appendix "15-7.2-03 End of Stay and DL/ID Expiration Procedures."

Benefits

The benefits of expiring the DL/ID on the end-of-stay date are:

- DL/ID issuance motivates customers to keep status valid with Bureau of Citizenship and Immigration Services (BCIS).
- Standardized procedures for reciprocity when immigration status is authorized by BCIS.
- Easier enforcement of laws regarding end-of-stay date/card expiration date.
- Elimination of calculation errors as end-of-stay date is provided by BCIS.
- Increased control, as DL/ID issuance is eliminated without appropriate BCIS documentation.

7.2.2 Undocumented Immigrants

In May 2003, AAMVA recommended that jurisdictions not grant a photo DL/ID to an undocumented immigrant. To strengthen the security of the photo DL/ID and the issuance process associated with it, it is necessary to

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				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
---------------------------	--	--	--	--	--	--	--

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	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.

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				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
---------------------------	--	--	--	--	--	--	--

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	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.

Ernest Prax

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

Importance: High

Dear Mr. Prax,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Margaret Stock

Margaret Stock



Counsel to the Firm, [Bio](#) | [VCard](#)
Lane Powell LLC
301 West Northern Lights Boulevard, Suite 301
Anchorage, AK 99503-2648
Direct: 907.264.3323
Cell: 907.223.6297
www.lanepowell.com

This message is private or privileged. If you are not the person for whom this message is intended, please delete it and notify me immediately, and please do not copy or send this message to anyone else.

Please be advised that, if this communication includes federal tax advice, it cannot be used for the purpose of avoiding tax penalties unless you have expressly engaged us to provide written advice in a form that satisfies IRS standards for "covered opinions" or we have informed you that those standards do not apply to this communication.