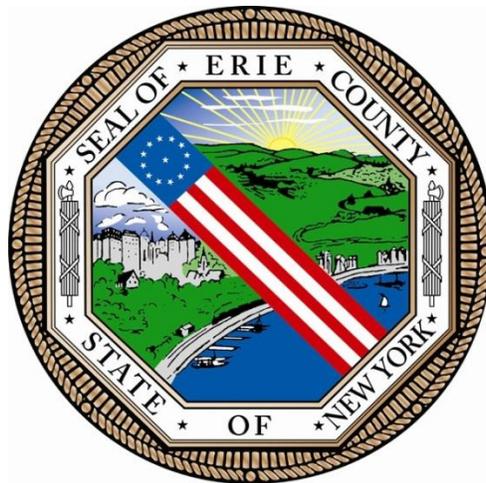


June 2019

A Report on Driver's Licenses for Illegal Aliens



STEFAN I. MYCHAJLIW
ERIE COUNTY COMPTROLLER

HON. STEFAN I. MYCHAJLIW
ERIE COUNTY COMPTROLLER'S OFFICE
DIVISION OF AUDIT & CONTROL

**95 FRANKLIN STREET
BUFFALO, NEW YORK 14202**

June 5, 2019

Erie County Legislature
92 Franklin Street 4th Floor
Buffalo, New York 14202

Dear Honorable Members:

At the request of the Erie County Clerk, the Erie County Comptroller's Office has completed a report on consequences of granting drivers licenses to illegal aliens.

Our objectives were to:

- Review proposed laws under consideration in the New York State Senate and Assembly.
- Understand current processes for obtaining drivers licenses.
- Determine implications of granting such licenses under the laws proposed.

To accomplish these objectives, we reviewed proposed laws and interviewed individuals at the Board of Elections, the Erie County Clerk's Office and members of law enforcement,.

As a result of our examination, we have made observations regarding the consequences of granting licenses to illegal aliens under laws currently proposed in the New York State Assembly and Senate.

Table of Contents

Background	4
Impact on Erie County Clerk's Office	4
Impact on Law Enforcement.....	5
Impact on Voting.....	6
Other Impacts	7
Conclusion.....	8

Background

The New York State Senate and the New York State Assembly are currently considering legislation which would grant undocumented aliens the ability to secure a New York State driver's license. These individuals lack the proper identification currently required to secure a driver's license, because they are in the United States illegally. The Governor has indicated his intention and desire to sign such a bill into law. The proposed laws are specifically designed to give driver's licenses to illegal aliens, while also offering them protections to reduce their risk of being held accountable for violating United States immigration laws.

One of the major reasons cited for the desire to give illegal aliens a driver's license is so that these individuals can legally drive to work. A major flaw in that reasoning is that according to the federal Immigration Reform and Control Act, it is a federal crime to employ undocumented employees. As such, it would seem that New York lawmakers are seeking to abet individuals in this country illegally to commit another crime by working.

Regardless of the intent behind the law, it will have an impact on the Erie County Clerk's Office, law enforcement, the Board of Elections, employers and citizens of Erie County.

Impact on Erie County Clerk's Office

Number of Employees: Currently, the Erie County Clerk reports that his staff has been taxed due to the implementation of the federal REAL ID program, which has increased requirements for verifying the identity for individuals wishing to use their license to participate in air travel and individuals seeking to enter federal buildings or military bases. It is anticipated that granting the opportunity for illegal aliens to obtain a widely recognized form of identification will result in higher demand for services at the Clerk's Office. As such, increased staff may be required for this increased service load, especially considering other factors discussed below. Further, the influx of applications may also cause a delay in processing other documents, such as vehicle registrations.

Increased Training: With a change in documentation required to secure a license, increased training will be necessary. Staff at the Clerk's Office is not currently trained to identify legitimate international birth documents. This will require extensive training to recognize the potentially hundreds of new types of identification acceptable for illegal aliens to secure a license. This training will include not just the ability to recognize a legitimate official document, but also to translate. A co-sourcing agreement may be advisable to undertake such tasks. However, such agreements have faced difficulty securing approval from the legislature in recent history.

Certainly, if the documents come from a member nation in the apostille section of the Hague Convention, the verification process is made easier. It has not yet been determined whether the applicant or the government providing a license will be responsible for the cost for this process. Regardless, assistance in translating the document will be necessary. As such, the Clerk's

Office should, at a bare minimum, add to staff a “Language Access Coordinator,” such as is utilized by the Department of Social Services. Such a person would assist in obtaining foreign language services to facilitate the application for a license, as well as determine the language in which a document is printed.

It should be noted that not all nations are members of the apostille section of the Hague Convention. As such, staff will need to familiarize themselves with the embassy legalization process for each non-member nation.

Increased Security: In order to open a checking account, individuals typically must be able to produce a valid Social Security number or employee identification number. Very few banks will open an account for a customer without a valid Social Security number or employee identification number. This is especially true for banks in the Western New York area. Given that illegal aliens are in the United States illegally, it is unlikely that such individuals would be able to produce valid numbers to open a checking account. As such, illegal aliens seeking to secure a license would likely do so with cash. While Clerk’s Office locations currently accept cash, it should be anticipated that the amount of cash taken in will increase significantly. Increased cash flow may necessitate increased security to adequately protect these funds. This would include measures, such as armored car services, to safely transport cash from satellite locations to banking facilities. Further, policies and procedures regarding cash handling should be reviewed and amended as necessary.

Employee Morale and Support: The law has been written with the intention that illegal aliens be able to secure licenses. As such, the different identification requirements for an illegal alien to secure a license are an indication that the applicant is in the United States in violation of federal law. The proposed state law prohibits employees who suspect that an applicant is in violation of federal law from notifying proper law enforcement agencies. As such, the proposed law condones illegal activity and condemns the reporting of it. This mixed message may be confusing or disturbing for employees of the Clerk’s Office. The Clerk’s Office should be prepared to offer support to such employees, as well as offer increased training to reinforce which violations of law are not illegal to report to appropriate law enforcement agencies.

Clearly, implementation of this proposed law will require additional resources for the Clerk’s Office. At this time, the amount of additional resources is not known. Further, the true impact will not be known before the Clerk is required to submit his budget to the County Executive or even before the Legislature approves a final budget. Regardless, the Clerk’s Office should seek guidance from the State as to how many licenses it intends to furnish to illegal aliens through Erie County Offices and utilize this guidance while formulating its proposed budget.

Impact on Law Enforcement

Inability to Access Database: The proposed law denies law enforcement the ability to access the Department of Motor Vehicle database without a warrant. This database provides

information which is important and useful to law enforcement. As such, the ability for law enforcement to enforce federal immigration laws will be hampered. For example, an illegal alien presenting a valid license cannot be subject to having their identity further verified by accessing the DMV database. Consequences of this may include releasing the individual due to insufficient ability to determine that they have committed a crime. It may also present the opportunity to present a false identification.

Impaired Safety to Law Enforcement and Motorists: Because of the inability of law enforcement to adequately inquire about an individual using information from the DMV database, law enforcement officers may have incomplete information regarding an individual stopped for a potential offense. This may put law enforcement officers in danger. Further, given decreased access to information, officers will be forced to assume the worst case scenario when interacting with motorists. This may lead to misinterpretation of statements and actions and increased stress for both officers and motorists involved in a stop.

Notification to Individuals under Investigation: Under current practice, law enforcement may access the DMV database and request that the individual not be notified of the inquiry. Under the proposed law, it would be mandated that the subject of the warrant be notified of the records request. This would serve to give the subject the opportunity to take evasive measures to avoid law enforcement. For example, a person so notified of such a request may choose to leave New York State and seek refuge elsewhere. Of course, they would be doing so with a valid form of identification that may come with certain rights and opportunities in other states.

Access to Other Documents: A driver's license is accepted as a valid form of identification that entitles the bearer to certain rights and privileges. It is also frequently an accepted form of identification to secure other documents that are accepted forms of identification. As such, a license can be used to amass multiple forms of acceptable identification. Armed with multiple forms of identification, it becomes more difficult to enforce the laws of the United States and bring violators of these laws to justice.

Human Trafficking: One tipoff that an individual may be in the country illegally and the victim of human trafficking is a lack of identification. By providing access to identification for these victims and their abusers, it may make identifying human trafficking more difficult. As such, victims in need of assistance may be overlooked.

Given the changes that the proposed law would have on access to DMV databases, law enforcement will be required to adjust their investigatory strategies. Of course, these changes in strategies will likely result in a change in behavior. Because law enforcement interacts with the public, these changes will also require the public to adjust to changes in interactions with law enforcement.

Impact on Voting

Motor Voter Law: Currently, individuals can register to vote on the same paperwork used to apply for a driver's license. It is not clear in the law if this opportunity will be removed from the application. It seems odd that a law intended to promote giving illegal aliens the opportunity to drive would also give those same individuals the right to vote, a right that is only due to legal citizens.

Registration to Vote: Regardless of whether illegal aliens will be given the opportunity to perjure themselves on their application for a driver's license by registering to vote, the mere fact of possessing a driver's license may afford illegal aliens the conduit to register to vote. In current practice, the Board of Elections requires a license or a Social Security card to register to vote. Either of these identifications are used to confirm identification, not citizenship. Currently, it is difficult to obtain either of these documents as an illegal alien. If this task is made easier by granting illegal aliens access to a license, all that is left to do is swear citizenship to be allowed to vote. It is entirely plausible to anticipate that someone who has violated the citizenship laws of the United States would also perjure themselves by swearing citizenship to secure the ability to vote illegally.

Other Impacts

License Tourism: Given the desirability for illegal aliens to secure valid identification from a government in the United States, New York State may be sought out as a destination for illegal aliens. Once secured, this access document can be used to secure other forms of identification and the rights that those forms of identification provide access to. New York State in general, and Erie County in particular, is situated along a major international border crossing. This may provide even more incentive and opportunities for individuals to come to New York State for identification.

Discordant Privacy Rights: As proposed, the law creates different privacy rights for legal citizens than for illegal aliens. For example, legal citizens will still have their information in the DMV database accessible by law enforcement. Illegal aliens will not. Further, New York State derives substantial revenue by selling information about legal citizens collected as part of the DMV database. Information about illegal aliens will not be sold. This would seem to give individuals in this country illegally more privacy rights than legal citizens as it pertains to DMV records.

Increased Access to Firearms: Outside of New York City, a driver's license is required to purchase a rifle or shotgun. The license is used to prove residency in New York State, regardless of whether the individual is legally residing in the state or not. As such, a possessor of a driver's license has access to firearms. By increasing the amount of driver's licenses available, the number of individuals with access to firearms is also increased.

Legal Liability for Employers: Because the driver's license is considered an access document for other forms of identification, it may lead to inadvertent violations of the federal Immigration

Reform and Control Act, prohibiting the hiring of illegal aliens. Although an unwitting employer would lack the intent to be held responsible for a crime, it could impose a burden on an employer to prove his or her innocence. Further, an unscrupulous employer could encourage and assist an illegal alien to secure a series of documents to give the employer the cover of having “unwittingly” hired an illegal alien.

Insurance Costs: Automobiles operated by licensed drivers must be covered by insurance in New York State. In order to obtain insurance, applicants must typically provide a Social Security number. Insurance companies use this information to assist in identification of the applicant, as well as to determine if the applicant has been involved in previous claims or has a criminal record. Failure to provide such a number may result in a denial of coverage, or a presumption that the applicant is trying to hide evidence of a previous claim or illegal act. In the case of an illegal alien, it would seem to be an accurate assumption. Even if the applicant obtains insurance without a Social Security number, the applicant would be assigned to a higher risk pool. Such an assignment would tend to increase insurance costs for members of that pool.

Increased Legal Fees: Erie County should anticipate litigation as a result of this law, if passed by the New York State Senate and Assembly and signed by the Governor. If the Erie County Clerk chooses to support federal law and provide information to federal law enforcement regarding suspected illegal aliens, it is likely that legal action will be taken against him. On the other hand, if the Clerk chooses to implement the potential New York State law as written and grant licenses, it is also probable that litigation against him will ensue. Erie County will be responsible for defending the Clerk and the county as a whole. Given the cost of litigation against counties in certain matters, it is anticipated that costs to the county will be hundreds of thousands of dollars.

Conclusion

The proposed laws to give driver’s licenses to illegal aliens will have a significant impact in Erie County. The county should anticipate an increase in the number of applicants for driver’s licenses, who may flock here illegally from around the country and Canada to secure a recognized form of governmental identification. In order to accommodate these illegal aliens, the Erie County Clerk’s Office will be required to make adjustments in staffing levels and skills in order to process these applications.

Law enforcement will also see impacts to their strategies and interactions as a result of this law. Given the intent and the execution of the proposed law, law enforcement may also have to determine this law’s interaction with other laws. For example, the question of the legality of a law passed to assist the violation of federal laws regarding employment of illegal aliens must be addressed. Further, the prohibition of certain individuals to report the violation of laws to law enforcement must also be addressed.

The law will equip illegal aliens with a tool to secure other forms of identification and associated rights. A more immediate impact will be to give illegal aliens a document which can be used to register to vote, if they are willing to perjure themselves by swearing that they are a legal citizen. This does not seem beyond the realm of probability, given that they are violating the law by being present in the United States.

The law also grants illegal aliens increased privacy rights over legal citizens. This disparity of rights comes at an increased cost to legal citizens relative to illegal aliens.

Given the foregoing, it is advisable that all levels of government take steps to prepare for major changes and consequences of this law if passed by the New York State Senate and Assembly and signed by the Governor. These steps include not only adjusting staffing levels, providing additional training, and revising policies and procedures, but also budgeting for other costs that the implementation and execution of the law will incur.