

**A Public Statement from the New Mexico Immigration Law Section:  
New Mexico Driver's Licenses and the 2016 Legislative Session\***

The current state legislative session in New Mexico is underway, and the Roundhouse will again consider the issue of licensing immigrants to drive.

**The Immigration Law Section of the New Mexico State Bar maintains the following two positions regarding any proposed legislation that would modify existing procedures for the issuance of driver's licenses:**

- 1. Any decision to link the issuance of a driver's license to a person's lawful status in the United States will create unnecessary public safety issues, impede law enforcement, and require state officials to impermissibly engage in immigration enforcement.**
- 2. Furthermore, a two-tiered system of driver's licenses that is dependent upon the establishment of a legal status in the United States is discriminatory, the effects of which will be felt by citizens and non-citizens alike.**

**Background of the Driver's License Issue:**

The REAL ID Act ("REAL ID", "The Act") was passed by Congress in 2005, adopting the recommendations of the 9/11 Commission, which sought to create more consistent and secure identity documents, with the idea that this would contribute in the fight against terrorism. Because most Americans use their driver's license as a personal ID, many state legislatures have chosen to alter procedures for the issuance driver's licenses in order to comply with REAL ID.

In the 2015 state legislative session, Governor Martinez rejected a bill passed by the State Senate 35-5 which would have brought New Mexico into compliance with the REAL ID Act while continuing non-discriminatory issuance of driver's licenses. Under the guise of REAL ID compliance, some New Mexican politicians have proposed bills which mislead the public regarding the actual requirements of the REAL ID Act.

REAL ID is a mandate for Federal agencies alone and participation by States is voluntary. Federal agencies are prohibited by REAL ID from accepting noncompliant forms of identification for official purposes, such as boarding aircraft, accessing federal facilities, and entering nuclear power plants.<sup>1</sup> The implementation of provisions has occurred in stages. On January 8, 2016, Department of Homeland Security (DHS) Secretary Jeh H. Johnson, identified January 22, 2018, as the final implementation date of the REAL ID Act, after which state-issued forms of identification cards failing to meet the requirements under the REAL ID Act will no longer be valid for domestic air travel. However, REAL ID compliance will not be required for another two years. The fact of the matter is that REAL ID Act **does not apply** to the issuance of state driver's licenses.

It is entirely possible to pass legislation bringing New Mexico in compliance with the REAL ID Act without taking drastic measures that clearly marginalize more than one section of New Mexico's population. Allowing the current driver's license procedures to continue while offering eligible members of the public the choice a REAL ID compliant driver's license/identification or opting out for their own reasons

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<sup>1</sup> Source: U.S. Department of Homeland Security

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will preserve freedom of choice for U.S. citizens, ensure that **all** motorists are compliant with state licensing requirements, and accomplish the purpose of licensing laws—that is to safeguard the population of our state.

**Proposed bills linking access to a driver’s license based on legal status in the United States will result in the following public issues:**

- **An increase in the rate of uninsured motorists**
  - Undocumented persons are unlikely to seek licensing when doing so will increase their exposure to deportation.
  - For example, HB 99, proposed by Representative Paul Pacheco, if passed in its original form, would have legislated the creation a “driver’s privilege card” that **only** undocumented persons could obtain. This “driver’s privilege card” would have been valid for one year, fingerprint would be taken prior to issuance, and an FBI background check would be conducted. Most formidably, HB 99 in its original form called for a new and separate database that would be available to government agencies such as Immigration and Customs Enforcement (ICE).
  - This proposed bill would also require **all** licensed individuals to reapply for licenses. Such a requirement is detrimental to continuous licensing and is bound to result in a reduction of the number of licensed and thus insured motorists on New Mexico roads.
    - Furthermore, U.S. citizens and eligible foreign nationals, under the originally proposed HB 99, would have to reapply and produce a birth certificate and a Social Security card in order to be granted a driver’s license. **The bill included no exceptions.**
  - Creating a cumbersome process for obtaining a driver’s license will have a discriminatory impact on the state’s lower income population.
    - In a state where 40% of the population falls below 200% of the federal poverty level, a two-tiered system shortening the length of licensure from the average of four to eight years to either one or two years (depending on the form of licensure sought) place an undue economic burden on the poor of this state .
    - Requiring lower income citizens to obtain new forms of documentation in order to obtain a driver’s license also places an undue economic burden on our state’s s most vulnerable citizens, discouraging renewal of licensing.
    - Immigrants will also be represented in that 40% figure. Requiring renewal of a driver’s license every year will create an undue economic burden on an already marginalized population and discourage renewal of licensing.
- **An increased rate of persons leaving the scene of an accident**
  - In New Mexico, a person must maintain a valid driver’s license in order to remain insured. If unlicensed and thus also uninsured, an undocumented person is far less likely to remain at the scene of an accident to render aid and will have no insurance information to exchange.
- **An impediment to effective law enforcement**
  - While imperfect, the MVD database, used to identify the nineteen 9/11 hijackers, demonstrated that it is a far more reliable source of identification,. This continues to be true, as it contains the addresses and identification information of millions of non-citizens in the United States and is accessible to ICE as well as state and federal agencies. If the undocumented population is excluded from this database, law

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enforcement agencies will face severe hurdles in obtaining information regarding the undocumented population.

- **A constitutionally impermissible and cumbersome enforcement of immigration laws by state and MVD officials**
  - As Arizona has discovered with the ill-fated state bill, SB 1070, attempts to enforce immigration laws by state officials are a violation of the Constitution of the United States.
  - Enforcement at the state level is also illogical. By requiring proof of lawful status, state and MVD officials will have to determine what a valid lawful status is, a complex matter requiring extensive training.
  - For starters, many persons are permitted by the federal government to remain in the United States, have work authorization, and obtain a Social Security number, all without a “lawful status”. It is also worth noting that the proposed state bills defining “legal status” or “lawful status” fail to actually track the federal definition of “lawful status”.
  - As an example of the complexity behind determination of a lawful status: how is lawful permanent residency proved? Commonly referred to as a “green card” holder, such a person is or will become eligible for citizenship. But what happens if he or she loses his or her “green card” or it is stolen? Does that person lose their lawful status? And what if this loss or theft occurs after issuance of a driver’s license when now the person cannot prove that his or her driver’s license was validly issued?
    - Even after the person files an application to replace their card with the federal government, the current processing time for such replacement documentation is at least nine months. And while there is a process a person can go through to obtain interim proof of lawful permanent residency, that documentation is obscure to state and even federal official who are therefore often unwilling to accept such proof when presented.
- **A negative impact on this state’s economy**
  - Denying or severely limiting access to a driver’s licenses will impede access to the primary form of individual transportation in New Mexico. For those with valid employment authorization, restricted access to transportation will affect their ability to obtain and/or maintain employment.
  - With a reported unemployment of 6.7% (per U.S. Department of Labor statistics from December 2015), any job loss attributed to lack of adequate transportation is detrimental to our state’s economy.

The New Mexico Immigration Law Section urges New Mexicans to not only understand the requirements of the REAL ID Act but also to recognize the full-range of implications of legislation that conflates the issue of safeguarding the public on New Mexico through licensing with combating the presence of undocumented persons in our state.

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