

PRIVILEGED AND CONFIDENTIAL

MEMORANDUM

To: Governor Deval L. Patrick
From: Secretary Richard A. Davey
Re: Safe Driving Executive Order
Date: June 30, 2014

1. **Question Presented**

Can the legislative objectives of the Safe Driving Bill be achieved by enacting an executive order?

2. **Brief Answer**

The broad objectives of the Safe Driving Bill can be achieved by enacting an executive order and promulgating revised regulations.

3. **Provisions of the Safe Driving Bill**

The Safe Driving Bill would preclude the Registrar from denying a license or learner's permit "based on a failure by a Massachusetts resident ineligible for a social security number to provide a social security number or evidence of immigration status."

The Safe Driving Bill would also distinguish licenses issued to Massachusetts residents ineligible for social security numbers from those issued based on a social security number in several respects:

- The license would be valid for four years instead of five;
- The license would be "invalid if the holder is unable to provide proof of liability insurance upon the request of a law enforcement officer;" and
- The license would be visually distinct.

4. **Objectives of the Safe Driving Bill**

The objectives of the Safe Driving Bill can be described in broad or narrow terms. Broadly, the Safe Driving Bill aims to allow state residents to apply for a learner's permit or driver's license regardless of their immigration status. By doing so, the bill aims to increase the number of drivers who are trained, tested, and licensed. It also aims to increase the number of insured drivers, by eliminating a barrier to obtaining insurance – the lack of a driver's license.

More narrowly, the bill aims to:

- prevent the Registrar from requiring a social security number or proof of valid immigration status as a condition to obtaining a driver's license;
- create two distinct licenses valid for different periods and visually distinct, one of which would only be available to individuals who are ineligible for a social security number; and
- tie the validity of a driver's license obtained without a social security number or proof of valid immigrant status to proof of insurance on an ongoing basis.

5. How the Objectives of the Safe Driving Bill Could Be Accomplished By Executive Order

There is no legislative barrier to adopting an executive order related to the Safe Driving Bill.

Chapter 90 of the Massachusetts General Laws delegates authority to regulate the operation of motor vehicles to the Registrar. There is no express requirement in state law that a person must have a social security number to obtain a driver's license. Currently, however, Registry of Motor Vehicles ("RMV") regulations require an applicant to "establish proper identity" by "provid[ing] his or her social security number, the validity of which the Registrar may confirm with the U.S. Social Security Administration." 540 C.M.R. 2.06, 3 (b). Moreover, the RMV regulations require a natural person (individual) to provide at least one of the following four criteria to the Registrar: "a valid driver's license, a valid Massachusetts' Identification Card, the applicant's Social Security Number, or other proof of

legal residence in Massachusetts.” 540 C.M.R. 205, 8(a). By policy, the RMV requires individuals who do not provide a social security number to submit both proof that the individual is ineligible for a social security number and proof of valid immigration status.

The Governor could issue an executive order directing the Registrar not to require a social security number or proof of valid immigration status for those individuals who are ineligible for a social security number.

Adopting this broad directive by executive order would achieve the broad objectives of the Safe Driving Bill – allowing residents without a social security number or proof of immigrant status to obtain a driver’s license or learner’s permit – but it would be less effective than legislation to the same effect. If such provisions were adopted by legislation, any registrar would be powerless to adopt contrary regulations. Put another way, regulations or policies that made it impossible for Massachusetts residents to obtain a driver’s license or learner’s permit without a social security number or proof of valid immigration status would lack the force of law and be unenforceable as exceeding the registrar’s authority. By contrast, an executive order would direct the registrar to act consistent with the executive order.

Because an executive order would only direct the registrar to act, not change existing law, the current Registrar would also need to amend the RMV regulations to make them consistent with the Executive Order.

The Governor could also attempt to accomplish the more specific objectives of the Safe Driving Bill by directing the Registrar to create a visually distinct, license available only to individual’s ineligible for a social security number and effective only when accompanied by proof of insurance.

The RMV is not recommending this course at this time, in favor of defining the specific contours of the new licensing procedure through regulation.

6. Issues to be Resolved By Regulation

Whether the executive order adopted by the Governor is broad or specific, the Registrar will need to adopt new regulations to make the executive order effective. Several practical issues need to be resolved. The RMV therefore recommends that the Governor adopt a broad executive order, giving the Registrar the flexibility to resolve the open issues through regulations in the manner most conducive to efficient and economical operation of the RMV. Some of the decisions that would need to be made include:

- Whether residents eligible for social security numbers should continue to be required to submit social security numbers as a prerequisite to obtaining a driver's license or permit.

Use of social security numbers in driver licensing plays an important verification role in determining the identity of the person being licensed. The RMV is also obligated by statute to "collect and maintain certain information, including the name, date of birth, address and social security number, for each applicant for a license and each individual to whom a license is granted or renewed" as part of an effort to support the enforcement of child support obligations. Continuing to require residents who are eligible for social security numbers to provide them as a prerequisite to obtaining a license would preserve these objectives. To meet the objectives of the Safe Driving Bill, however, the RMV will need to find another reliable means of verifying the identity of individuals who are not eligible for a social security number and a reliable means of distinguishing individuals who are eligible for a social security number from those who are not.

- Whether there should be two distinct licenses or only one.

Creating two distinct licenses would create logistical difficulties that would require resources to overcome. A new license design would have to be created. A vendor would have to be secured to provide the new design. Forms, policies, and procedures would have to be put in place at the RMV to control the distribution of the new license and ensure that the appropriate form of license was issued in each circumstance.

- Whether the second license, if one is created, should be valid for the same period of time or not.

Administering two licenses that are valid for different time periods would require significant process and technology changes necessitating considerable effort and expense.

- How to best make the new licensing arrangements consistent with the Real ID Act.

The Real ID Act permits states to issue two types of licenses and identification cards – those which meet the requirements of the Real ID Act and those which do not. In order to become a “Real ID compliant” jurisdiction, Massachusetts would have to issue credentials which meet the requirements of the Act such as verifying the legal presence of an individual through the SAVE program (Systematic Alien Verification for Entitlements). Currently, Massachusetts does not meet these requirements.

On the other hand, it may be a goal to eventually become a Real ID compliant jurisdiction. In that event, the RMV would have to create a second license, most likely with a different design than currently used, available only to individuals verified through SAVE. You previously approved the concept of the hybrid, two license approach as a path to comply with the Real ID Act.

- Whether a license should be invalid if the holder is unable to provide proof of liability insurance upon request of a law enforcement officer.

The Safe Driving Bill provides that a license is invalid if its holder cannot provide proof of liability insurance. Under current law, insurance is linked to the registration of a particular motor vehicle rather than to the license of a particular driver. Registered owners of motor vehicles are required to carry insurance. Licensees who do not own motor vehicles are not required to have insurance. Linking the validity of a license to the individual’s having insurance would require a substantial overhaul of current Registry policies, practices and procedures. Such an overhaul does not appear to be

necessary from a law enforcement standpoint. If an individual is stopped and cannot provide the officer with the car registration indicating that it is insured, the operator can be charged with operating without insurance. The individual is subject to a fine and/or imprisonment if found guilty.

7. Next Steps

Whichever type of executive order is adopted, MassDOT will need some time to implement this policy change. The RMV continues to use ALARS, an old and clunky mainframe system. The RMV is in the middle of a multi-year process to modernize the system, though it is not yet up and running. Reprogramming ALARS to permit RMV employees to issue licenses under new procedures will require significant time and effort. I have asked our Chief Information Officer to work with the Commonwealth's CIO, Bill Oates, to see how we can best implement an EO without disrupting the current system.

8. Recommendation

The RMV recommends that the Governor adopt an Executive Order directing the Registrar (i) not to require a social security number or proof of valid immigration status for those individuals who are ineligible for a social security number and (ii) to adopt specific regulations to implement this policy directive and increase the number of Massachusetts residents eligible for a driver's license or learning permit.