

Department of Finance and Administration

Legislative Impact Statement

Bill: HB2006

As Engrossed: 4/12/2013

Bill Subtitle: TO AUTHORIZE ISSUANCE OR RENEWAL OF A DRIVER'S LICENSE FOR ELIGIBLE NONIMMIGRANT EMPLOYEES AND THEIR DEPENDENTS FOR PERIODS OF EXTENSION OR APPLICATION FOR EXTENSION.

Basic Change :

Sponsor: Representative Leding

This bill authorizes issuance or renewal of a driver's license for eligible nonimmigrant employees or students and the student's spouse and minor children for 240 days after the person's United States Customs and Border Protection Form I-94, Arrival/Departure Record or Passport Admission stamp has expired. The nonimmigrant employees or student and the student's spouse and minor children must submit a valid Form I-797C Notice of Action form to obtain the 240 day extension upon renewal or to obtain up to a 240 day driver's license upon the issuance of an Arkansas driver's license. The bill does not apply the extension to the spouse and minor children of nonimmigrant employees as this is not addressed in the amendment.

Currently, Arkansas only approves the 240 day extension for Arkansas driver's license holders or identification card holders who have provided the valid Form I-797C Notice of Action form and are designated as employees with specialized knowledge as is required by federal law. If prior to the end of the 240 day extension, the employment authorization is terminated or the extension denied, then the driver's license or identification card is cancelled. This bill appears to require the state to issue or renew the driver's license for the entire 240 days even if the extension of legal presence has been denied by the federal government.

Revenue Impact :

None

Taxpayer Impact :

Nonimmigrant workers' spouse and minor children will not be granted the 240 day extension.

Resources Required :

Programming will be required and an estimate has been requested. Policies and procedures will need to be developed and all Revenue Office personnel will need additional training.

Time Required :

DFA would need until January 1, 2014 to implement this bill.

Procedural Changes :

All Revenue Office personnel will need to be trained to administer this driver's license and ID card extension only to nonimmigrant workers, students, students' spouses, students' minor children.

Other Comments :

A.C.A. § 27-16-1112 which applies to the expiration of identification cards would also need to be amended. References to adoption of federal code must have a date specific of the date of adoption.

Legal Analysis :

Amendment H1 to HB2006 includes language to provide for state issuance of driver's licenses to nonimmigrant visa holders who are legally in the country but who are between the original expiration date of the I-94 admission visa and the new employer-sponsored extension.

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DFA has previously addressed this issue administratively. The proposed statutory language tracks the administrative determinations previously made regarding the I-797C Notice of Action federal forms. Therefore, the substantive changes proposed by this bill have previously been incorporated by DFA's Office of Driver Services into its driver's license renewal procedures.

The amendment incorporates citations to federal statutes and federal regulations without designating the version each federal statute or regulation by date. This could be challenged as an unlawful delegation of legislative authority to the US Congress in violation of the separation of powers doctrine. The General Assembly may delegate portions of its authority in limited circumstances. The General Assembly must specify the specific language of federal statutes that will be incorporated into Arkansas law. This issue may generally be remedied by identifying the language of the federal statute or regulation being referenced by a specific date, e.g., January 1, 2013, so that the determination of the Arkansas law is made by the General Assembly and not the United States Congress.

To ensure there is no question regarding a possible unconstitutional delegation of legislative authority, the federal law provisions should be adopted as of a specific effective date.

In addition, this bill contains two typographical errors that should be corrected before this bill is passed. More specifically, in Section 1 of the bill, the bill adds two subdivisions "(x)" and "(xi)" to § 27-16-1105(a)(1)(D), but the bill does not delete the "or" that is found following § 27-16-1105(a)(1)(D)(viii). An amendment to Section 1 of the bill should provide the following language:

(viii) Has approved deferred action status; or

(ix) Has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States; ;

Also, in Section 2 of the bill, the bill amends § 27-16-1111(a), but the changes to this code section do not likewise reflect that Section 1 added two subdivisions to § 27-16-1105(a)(1)(D). An amendment to Section 2 of the bill, as it pertains to § 27-16-1111(a), should provide the following language:

(a) If an applicant for a driver's license under this chapter is not a citizen of the United States as provided under ~~§ 27-16-1105(a)(1)(D)(ii)-(ix)~~, § 27-16-1105(a)(1)(D)(ii)-(xi), the expiration date of the driver's license shall be the shortest of:

This bill does not have an emergency clause or effective date. However the Office of Driver Services may incur programming costs to implement the substantive changes of this bill. Therefore, it may be necessary to request the effective date of the bill be specified, e.g., January 1, 2014.