

Undocumented Motorist Safety & Insurance Task Force

Tuesday, February 18, 2014

4:30 – 6:30 PM

Buena Vista, Buck Library

Meeting Attendance

Task Force Members:

Present:

<u>E-mail:</u>	<u>Phone:</u>
Senator Bryan Townsend	Bryan.Townsend@state.de.us 302-744-4165
Senator Robert Marshall	Robert.Marshall@state.de.us 302-744-4168
Representative Andria Bennett	Andria.Bennett@state.de.us 302-744-4351
James Collins	James.Collins@state.de.us 302-744-4222
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Absent:

Senator Bryan Pettyjohn	Brian.Pettyjohn@state.de.us 302-744-4048
Representative Helene Keeley	Helene.Keeley@state.de.us 302-744-4351
Representative Joseph Miro	Joseph.Miro@state.de.us 302-744-4171
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Pastor Jermias Rojas	cryingprophet@verizon.net 302-562-4597
Judy Diogo	jdiogo@cdcc.net 302-734-7513
New Castle County Chamber of Commerce	– N/A
Greater Georgetown Chamber of Commerce	– N/A
Delmarva Poultry Industry	– N/A

Staff:

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Attendees:

<u>Organization:</u>	<u>Phone:</u>
Gene Reed	Del. Dept. of Insurance 302-674-7391
Rhonda West	Del. Dept. of Insurance 302-674-7379
Rev. Carlos Ochoa	St. John Holy Angels Parish 302-218-1608
Vladimir Rosales	LA ZMY Radio 302-655-2721
Rev. Salvador Magario	St. Catherine of Siena Church 302-633-4900
Max Gluestein	CSDL 202-312-1540

Andrew Meehan	CSDL	914-907-9679
Kami Beers	DMV	302-744-2561
Scott Vien	DMV	302-744-2730
Mike Williams	DMV	302-744-2565
Kevin Andrade	Media	302-228-8942

The task force meeting was brought to order at 4:38 pm.

INTRODUCTIONS

Senator Townsend, co-chair, introduced himself and thanked the members of the task force for responding so quickly upon the passage of Senate Concurrent Resolution (SCR) 36. He then turned the floor over to the members of the task force, who were present, to introduce themselves. The Senator noted that the Delmarva Poultry Industry and the Greater Georgetown Chamber of Commerce declined to have representatives on the task force, but that they are welcome to join in the public comment at any time. He further noted the New Castle County Chamber of Commerce is still deciding whether to have a representative on the task force.

TASK FORCE TIMETABLE

Senator Townsend stated per SCR 36, the task force is to meet monthly unless the co-chairs indicate otherwise. Furthermore, the report is due to the President Pro Tempore of the Senate and the Speaker of the House of Representatives no later than October 31, 2014.

BACKGROUND OF SENATE CONCURRENT RESOLUTION 36

Senator Townsend shared that Representative Keeley is glad that there is a renewed focus on the issue of undocumented motorist safety and insurance, as she, Representative Miro, and Senator Marshall have been looking at the issue for a while.

The Senator further elaborated that the background of SCR 36 was due to not just passing a law, but getting a knowledgeable, well diverse group together to look at an extremely complex issue. He noted how the issue affects many people in the state, including members of the General Assembly and their families, some of whom have been in automobile accidents involving undocumented drivers. The Senator explained that the task force has broad representation because of the fact that the issue is far-reaching in its impacts. Additionally, the Delaware Hispanic Commission and other legislators have wanted to address the issue for some time.

OVERVIEW OF ISSUES

Senator Townsend turned the floor over to task force member, Javier Torrijos, to provide an overview of the issues.

Javier Torrijos, Chair of the Delaware Hispanic Commission, thanked the Senator for sponsoring SCR 36. He stated that the issue is important, as some people live in fear and have a difficult time traveling from point A to point B. Furthermore, the Delaware Hispanic Commission (DHC) would like to see a responsible bill passed through the General Assembly as a result of the task force.

Senator Townsend thanked Mr. Torrijos and invited other members of the task force to provide input.

Bryan Cochran, representing the insurance industry, confirmed that the insurance industry is not prepared to take a stance on any immigration issues. Generally the industry supports attempts to test, license, and insure the safety of all individuals.

Senator Townsend affirmed that although some people thought immigration would be addressed at the federal level, this may not happen anytime soon, and thus it is important for the task force to face the issue of undocumented motorists. The task force is concerned with making sure that people, many who are already driving, can do so safely, legally, and with insurance. Another concern is making sure that the Delaware economy is more dynamic, fluid, and safer. There are many stakeholders, including the police, Homeland Security, and private insurers, which is why there is a diverse group at the table.

Mr. Cochran provided additional background on the issue, indicating the dilemma came from the Real ID Act, which Congress passed in 2005, and set the standards for state driver's licenses to be used for federal identification purposes. Another policy from the federal level that spurred action within the states is the Deferred Action for Childhood Arrivals Act. Children who qualify under this policy are referred to as "dreamers." These individuals must be under 30 years of age, must have resided in the U.S. continuously since June 15, 2007, must have arrived in the U.S. before the age of 16, and must attend high school, have earned a diploma or G.E.D., or have received an honorable discharge from the Coast Guard or branch of the military. Additionally, children must not have felonies or significant misdemeanors or pose a threat to national security and/or safety.

As of August 31, 2013, it was estimated, there were 1.76 million eligible "dreamers". The United States Citizenship and Immigration Services (USCIS) received 588,000 applications and approved approximately 455,000 applications. A "dreamer" is not an adult, but a child who has resided in the U.S. since before the age of 16. Mr. Cochran added that issuing driver's licenses to undocumented immigrants is a minimal cost to society. Issuing licenses to those who pass the test and demonstrate compliance with safety laws would have a positive effect on everyone's premiums.

To date only Arizona and Nebraska have decided against issuing driver's licenses to Deferred Action for Childhood Arrivals recipients. Eleven states, including California, Connecticut, Colorado, Illinois, Maryland, Nevada, New Mexico, Oregon, Utah, Vermont, and Washington have passed laws allowing undocumented immigrants to apply for some kind of driver permission. The application processes in Maryland, Washington, and Utah became effective in January 2014. Oregon's process became effective January 2014 as well, but is subject to a referendum in November. Colorado and Connecticut's processes will begin in August 2014; California's process will be effective January 2015. These permissions are not federal ID approved. New Mexico and Utah issue a type of driver's license that is marked to show that they are not federally approved. Utah issues a "driver privilege card." Illinois began issuing temporary visitor driver's licenses in November 2013. Mr. Cochran stated that he has access to statutes pertaining to the dreamer act to which the task force can refer at any time.

Senator Townsend stated this issue affects not only undocumented immigrants of Hispanic origin, but others as well. He noted that he receives emails from an undocumented Asian immigrant in his district. The Senator made clear the Delaware Alliance for Community Advancement (DACA) is on the task force representing a broader group of undocumented immigrants. He then asked if there were additional comments before proceeding with the presentation by task force member, Director Jennifer Cohan, of the Division of Motor Vehicles (DMV).

Gene Reed, Deputy Insurance Commissioner, was there speaking on behalf of the Insurance Commissioner and task force member Karen Weldin Stewart. He stated that the Commissioner supports the mission of the task force, and that Delaware could lead the nation by example on the issue.

PRESENTATION BY DIRECTOR, JENNIFER COHAN, OF THE DIVISION OF MOTOR VEHICLE (DMV)

Please refer to the attachment to view the PowerPoint slides. A summary of Director Cohan's slides is provided below:

Director Cohan introduced her team and stated that she would like the task force to move away from referring to driver's licenses and instead use the term "driving privilege card." She explained that this helps to separate these cards from existing driver's licenses and thus avoid problems for both the DMV and law enforcement.

Slide 2: Around 2012 undocumented individuals who had previously been issued driver's licenses were no longer able to renew their licenses. Additionally, Delaware was the first state to become compliant with the Real ID Act of 2005. Increasing the number of drivers who lack knowledge of the rules of the road is a safety concern, and the evidence indicates that such individuals are driving anyway.

Slide 3: The Federal Department of Homeland Security now allows the issuance of driving privilege cards as long as they are clearly marked that they are not for federal identification purposes. Currently about 60% of Delaware drivers have federally compliant licenses. The DMV would recommend a third tier category of driving privilege cards which would permit driving purposes only.

Slide 4: The DMV has helped identity management, specifically in cases of fraud and identity theft. Out of 12,000 cases reviewed, 1,300 cases were criminal identity theft. Furthermore, at one point prior to implementing the new system, there would be 12-20 attempts per week to bring fraudulent information and try to obtain things through fraud, but now there is only one attempt every six months. Director Cohan added that the public and private sectors rely heavily upon driver's licenses, including banks, mortgage lenders, and even the Department of Health & Social Services (DHSS) when providing services.

Director Cohan noted some states are handling the issue well, while others are not.

Slide 5: Illinois was the first state to implement driving privilege cards.

Slide 6: New Mexico is an example of what not to do: they issue a regular driver's license with no Social Security Number (SSN) required. Fraudulent activity has increased by over 50% in New Mexico. People from other states go to New Mexico specifically to obtain a driver's license, with evidence of linked criminal activity occurring as far away as North Carolina. New Mexico's lenient process for obtaining a driver's license has not had any impact on reducing uninsured motorists, reducing crashes, or improving public safety.

Slide 7: Originally Utah did not require finger printing and a photo for driving privilege cards applicants, but has since required those due to increased fraudulent activity. The DMV in Delaware does not think that finger printing would be necessary.

Slide 8: The state of Washington is still working out their license process, which is driven by jobs, specifically within the apple picking industry.

Slide 9: Nevada's driver authorization cards are similar to what the Delaware DMV would propose. However, Nevada's experience has indicated that a substantial education campaign would be necessary, since 75% of those who applied for driver authorization cards failed the test.

Slide 10: The Delaware DMV likes some of the requirements that are used in Maryland, including two years of tax documentation and alternative identification such as a valid foreign passport or driver's license from another country. Maryland is phasing in their program by offering the service through appointment only.

Slide 11: Connecticut is in the same phase as Delaware: created a task force to research the issue.

Slide 12: The backs of the cards issued in California indicate that they do not establish eligibility for employment, voter registration, or public benefits. The DMV does not think it would include this for Delaware-issued cards.

Slide 13: The DMV recommends that if driving privilege cards were to be issued, they would first require taking the complete written, vision, and road test. They also recommend requiring two years of filed Delaware Income Tax Returns in order to prevent undocumented individuals from coming to Delaware from other states just to obtain licenses, as has been the case in New Mexico. Director Cohan added that you don't necessarily have to have filed your own tax return; you can provide proof that you are a dependent on someone else's tax return.

The DMV recommends that the driving privilege card be valid for four years in order to perform more current facial recognition in order to decrease the potential for fraud. They also recommend a \$20 fee for the card (or \$5 per year).

Director Cohan clarified the DMV already allows Deferred Action students to obtain a driver's license. This was passed through legislation. The DMV checks with the federal immigration system, and students with deferred action show up as having legal status.

Slide 14: Director Cohan elaborated on the opportunities and challenges presented by the issuance of driving privilege cards:

Opportunities:

- Increase the number of motorists who meet minimum safety standards and know the rules of the road;
- Potential decrease in automobile accidents;
- Reduction of the number of insured motorists on Delaware roadways; currently 10% of motorists in Delaware are uninsured, which is a high rate;
- Decrease fear of undocumented individuals having contact with law enforcement; although the cards would not be for official identification purposes, they would facilitate the collection of information by law enforcement;
- Alleviate burdens on the judicial process for violators; there is a lot of involvement between the judicial system and undocumented individuals;

Challenges:

- The cost to issue the cards; the DMV provided Senator Marshall with a white paper on the estimated cost, which is \$1.5 million; much of the cost involves manpower and would be up front; the DMV has learned from Maryland that phasing in the testing may reduce this cost;
- An increase in the number of residents from other states coming to Delaware to obtain driving privilege cards; this challenge will be somewhat alleviated by requiring two years' of Delaware filed tax returns;
- The false perception that driving privilege cards legitimize the status of undocumented individuals; the task force needs to pay attention to how the private industry will perceive these cards;
- Reciprocity and consistency with other states; the DMV cannot guarantee that other states, such as Maryland, would honor Delaware-issued driving privilege cards; as a result, these cards would be privilege driving in Delaware only

Senator Townsend asked if there are any examples of reciprocity.

Director Cohan responded that there is a Driver's License Compact that ensures reciprocity, but that this does not necessarily cover driving privilege cards.

Senator Townsend inquired if any states that issue such cards have established reciprocity.

Director Cohan replied none of the states have yet, but that she has begun discussions with the state of Maryland, and that representatives from Virginia have not returned her calls. She stated

that it would be nice to establish reciprocity in the Mid-Atlantic region; however, it would be difficult since states are doing things differently from one another.

She further stated another challenge is that driving privilege cards would establish a centralized body of information on undocumented individuals. This would be a separate system than what is used for driver's licenses, and is necessary because the two types of cards look different and have to be tracked differently. Director Cohan noted that it will be necessary to address how the undocumented community feels about this issue.

Slide 15: Discussed a sample driving privilege card referring to the driving privilege cards in Utah and stated the Delaware DMV would issue something similar but without all the red markings. She reiterated the proposed requirement of having two years of Delaware tax returns (including being a dependent on someone's return).

She further noted that the cards would have a lot of physical security features. Director Cohan also stated that the card would be available to those who are ineligible for a social security number (SSN), consistent with every other state. The cards would have to be clearly distinguishable from driver's licenses, which is a concern for Homeland Security. Furthermore, the cards would have to be phased in due to the increasing workload at the DMV.

Director Cohan concluded the presentation by asking if there were any questions.

OPEN DISCUSSION BY TASK FORCE MEMBERS

Gene Reed, Deputy Insurance Commissioner, representing Insurance Commissioner and task force member Karen Weldin Stewart, clarified that birth certificates are necessary in order to obtain a compliant driver's license and asked if the DMV would issue compliant driving privilege cards.

Director Jennifer Cohan responded that the DMV is not looking to do that, and that the cards would not establish identity, only one's ability to drive legally in Delaware.

Mr. Reed asked where undocumented individuals would go to obtain birth certificates if they were required for identification.

Director Cohan replied stating such individuals would need to go to their respective consulates or their home country, but that the DMV is not looking to require birth certificates in order to issue driving privilege cards. Director Cohan reiterated that the DMV would not be able to vet the identities of individuals who obtain driving privilege cards for several reasons. One major reason is that driver's licenses issued in other countries do not necessarily meet the same standards for identification as in the U.S., so the DMV cannot use a foreign driver's license to vet identity.

Mr. Reed clarified his question regarding birth certificates in reference to age, which he noted is a determining factor for insurance rates.

Deborah Gottschalk, Chief Policy Advisor with Division of Health and Social Services, inquired as to whether states that consider employment when issuing privilege cards ever waive residency requirements as long as an individual can prove employment. Ms. Gottschalk stated that in cases in which undocumented individuals move to Delaware from other states, it would be nice for them to have a driving privilege card right away, rather than wait two years, so they can be safe and insured.

Director Cohan acknowledged Ms. Gottschalk's point but responded that the DMV would not be able to verify which individuals are moving to Delaware for work.

Ms. Gottschalk stated that she did not realize that this would require employers to document that they have employed someone who does not have proof of citizenship. She was curious as to whether states like Washington have dealt with this issue, since their current licensing process is driven specifically by jobs

Minutes prepared by Michelle Zdeb, Legislative Assistant and Caitlin Del Collo, Legislative Fellow.

in the apple picking industry. Ms. Gottschalk noted she has a contact at the National Immigration Law Center who can provide a legal perspective on the issue.

Director Cohan responded that the solution to the problem is comprehensive immigration reform on the federal level. What the DMV is proposing is essentially a “Band-Aid” for the state of Delaware.

Jose Somalo, President of the Sussex County Chapter for the Mid-Atlantic Hispanic Chamber of Commerce (MAHCC), asked whether other states require passports from the originating country as form of identity.

Director Cohan responded that some states do allow a foreign passport for identification purposes. She further stated it can be difficult to determine whether a passport is fraudulent; the DMV has had people try to use fraudulent passports from other countries. Other times an individual will show a foreign passport that the DMV suspects is fraudulent, but it’s not; the issue is that some nations’ passports are below the standard used in the U.S.

Senator Townsend, co-chair, inquired if the point of requiring two years of Delaware tax returns is to prevent people from other states coming to Delaware to get a privilege card.

Director Cohan confirmed yes, that is the point.

Senator Townsend questioned if there are any states that require only one year’s worth of tax returns.

Director Cohan replied that she did not think any states required just one year, and added that since Maryland requires two years, and the relationship between Delaware and Maryland is close, Delaware did not want to require any less.

Mr. Somalo asked if the tax return had to be federal or from the state of Delaware.

Director Cohan responded that the return would have to be from Delaware in order to prove that the individual resides in Delaware. She stated that in studying the issue, using state tax returns has been the best way to establish residency.

Senator Townsend asked for confirmation that the tax return requirement is purely to establish residency.

Director Cohan confirmed yes.

Rosario Calvachi-Mateyko, co-chair of the Delaware Hispanic Commission, asked for confirmation that the DMV would not require identification from the individual’s country of origin. She stated that undocumented persons sometimes have difficulty in obtaining passports from their home countries, especially in the cases of persons from Guatemala and Mexico. The difficulty is due to agreements between the countries that make it impossible to fake a passport. The time it takes to get a passport has increased from two weeks to three or four months, as the document has to go to the home country first. Ms. Calvachi-Mateyko stated that this is a good thing to prevent fraud. She noted she has heard from a majority of people that they do have tax identification.

She further inquired if the name “driving privilege card” could be changed to “safety driver card” or “required driver card,” since the purposed of the cards is to ensure safety and compliance with the law. She further stated that complying with the law is not a privilege, but an obligation held by motorists.

Senator Townsend encouraged input from James Collins.

James Collins, Governor’s Deputy Chief of Staff, suggested using the term “driving authorization card.”

Director Cohan responded that she agrees that it is an obligation. She added that driving is a privilege for all Delawareans, not a right, and that people have to be tested as part of the requirements to obtain the privilege. This notion is taught in driver's education classes.

Ms. Calvachi-Mateyko pointed out that every other citizen has a driver's license which is not called a privilege card.

Senator Townsend commented that Mr. Collins's suggestion of "authorization card" may be a good substitute. He further clarified that the word "privilege" is appropriate in the sense that undocumented individuals are not otherwise entitled to or eligible for a driver's license.

Director Cohan stated that if she could change the name of "driver's license" to "driving privilege card," she would.

Senator Townsend acknowledged that this topic brings up sensitive issues and that the task force must deal with them. He stated that everyone should feel comfortable weighing in. The Senator further stated that words and classifications matter.

Mr. Collins requested for elaboration on the centralization of information and how the federal government views that information.

Director Cohan stated that she has raised this issue with the Department of Homeland Security. She said that in the worst case scenario, if someone from Immigration wanted information on undocumented persons with driving privilege cards, the DMV would have to provide that information. Director Cohan is not sure what they would do with the information, and does not necessarily think this will happen; however, that is a concern of hers.

Javier Torrijos, chair of the Delaware Hispanic Commission, asked if in the history of the Delaware DMV has there been a request for information from a federal agency.

Director Cohan responded that the DMV has been good at deflecting requests. For example, the Department of Justice (DOJ) requested all information on people in a certain age range to be used for recruitment for the military. The DMV was effective in this instance in declining, but if the DOJ had pushed the issue, the DMV would have had to surrender that information. She stated that that has happened for other purposes.

Senator Townsend asked why the DMV would be compelled to release that information.

Director Cohan stated that it is because the request is coming from the federal government. She did cite Title 21 § 305, regarding privacy of customers, in rejecting the federal government's request, but there is precedent for federal agencies to receive information from the DMV. Director Cohan noted citing privacy of customers has worked in the past.

Ms. Calvachi-Mateyko pointed out the difference of Homeland Security asking for information about an entire group of people, rather than one individual who poses a specific threat.

Ana Velasquez, Director of Prevention and Advocacy for the Latin American Community Center (LACC), asked if the state could include something in the bill to prevent the federal government from obtaining information collected for driving privilege cards.

Director Cohan responded that they could put that in the bill, and other states have done so, but federal law may trump state law.

Ms. Gottschalk cited an example from implementing the medical marijuana program, and how the federal government probably will not arrest state employees who implement the program, but the federal government isn't willing to promise that.

Senator Townsend acknowledged the sensitivity of these issues and stated that he is interested in what the Attorney General's office and law enforcement have to say. The Senator stated that it would be helpful to give agencies a heads up on the issues so that answers to specific questions can be collected and reported at future meetings. He further stated that he is interested to learn how much the federal government can influence Delaware's action on this issue. The Senator then invited others to share pressing concerns.

Mr. Collins stated that in creating a database of information to monitor prescription drug use, the bar was set high for other agencies to access information. He specifically mentioned related criminal investigations as a consideration for releasing such information. He suggested setting a similarly high bar for the purposes of issuing driving privilege cards.

Director Cohan suggested that the task force could mirror the language of Title 21 § 305.

Senator Townsend provided an example of how to word language to express that state employees "who are in the care of this information shall not disclose it except in the following circumstance." The underlying idea is that the federal government cannot ask for information just because it is the federal government.

Sean Lugg, Deputy Attorney General, cautioned the task force that the DMV should be careful about wording since a lot of the DMV's work is funded through the federal government by specific pieces of legislation.

Senator Townsend provided an example of Mr. Lugg's statement, citing how federal highway funds are tied to the legal drinking age in the states. An additional example is federal education funding, which can depend on whether states do certain things. The Senator stated that it is important to determine what issues on the federal level are implicated by driving privilege cards. He commented that it seemed like the federal government was going to address the issue of more comprehensive immigration reform, but currently there has not been a lot of action on it.

Raymond Holcomb, Delaware State Homeland Security Advisor, asked whether the evidence from the states that have implemented driving privilege cards is clear regarding the public safety benefit.

Director Cohan responded it is unclear. Some states are seeing benefits, while others are not seeing benefits. That is why Director Cohan thinks the task force is a good idea, as opposed to moving forward with legislation. No state has found a direct correlation between driving privilege cards and increased public safety. A study in California suggests such a correlation, but the effect has not been realized.

Bryan Cochran, representing the insurance industry, stated some of the uncertainty is due to the fact that the issue is so new. The private insurance industry, for example, is not yet prepared to take a stance on the issue.

Director Cohan asked if a major insurance company would provide insurance for a person with a driving privilege card.

Mr. Cochran responded that a major insurance company would. He stated that currently all one needs to provide in order to obtain insurance is a valid driver's license from one's country of origin. A green card is not necessary. Insurance is provided for a period of one year when a valid foreign driver's license is provided. The industry wants to insure as many motorists as possible.

Representative Bennett asked whether an insured motorist with a driving privilege card can legally avoid paying fines if he/she gets into an automobile accident.

Mr. Cochran responded that an insurance contract does not depend upon citizenship. In the case of an accident with an undocumented, insured motorist with a driving privilege card, the insurance contract would be honored. Furthermore, the insurance industry is well aware of the demographics of the United States.

Senator Townsend stated that there has been discussion of crafting legislation that would clearly override insurance policies. The Senator said that he could see language in a policy that would dictate that an undocumented person was not actually entitled to “x, y, or z,” therefore an exclusion clause would go into effect.

Mr. Cochran reiterated that the industry already insures people from other countries as long as they have a driver’s license from their home country. Companies do not inquire as to whether motorists are in the U.S. legally.

Director Cohan stated that there have been individuals in Delaware with non-compliant driver’s licenses that have been denied coverage by certain companies.

Senator Townsend asked if that occurred at the time of trying to purchase the policy.

Director Cohan responded not saying it is right but reiterating, agencies have denied coverage in the past.

Mr. Reed stated that there have been claims on the internet of people paying insurance premiums and then being denied claims because they lacked a driver’s license. Mr. Reed does not know how true that is. He believes that language in the contract should uphold.

Representative Bennett clarified she was not trying to say that there have been cases of motorists avoiding fines, she was simply asking about a hypothetical situation.

Mr. Reed repeated that the insurance industry is very aware of emerging markets.

Representative Bennett stated her concern was with smaller insurance companies, as opposed to larger ones.

Senator Townsend stated it is important to keep in mind how the market will unfold, which is a great reason to have the private insurance companies and Insurance Commissioner represented here, as well as Representative Bennett.

Representative Bennett stated the importance of having the LACC present as well.

Ms. Calvachi-Mateyko stated the need for creating a legal framework for undocumented persons to drive. She said that there are many Latinos in the Georgetown area who thought that in purchasing car insurance, they were legally allowed to drive in Delaware.

Director Cohan stated that there are unscrupulous individuals who prey on undocumented individuals. For example, they rent vehicles or say they are providing insurance when really they aren’t.

Mr. Torrijos mentioned the challenge of the cost of insurance, as well as the burden to the judicial system. He inquired as to whether there is cost information since any legislation coming out of the task force would require a fiscal note. At the same time he acknowledged that there could be fiscal relief in other areas.

Director Cohan responded that she does not have those numbers yet, but that the DMV will recoup their costs over time. There will be an upfront cost, though.

Senator Townsend stated in hindsight it would have been helpful to have a member of the judiciary on the task force, but that there were already so many members. The Senator said that if he had known that a few task force representatives were going to decline, he would have asked a judiciary member to participate. However, the Senator said he is sure the judiciary will be willing to work on figuring out cost-savings information.

Mr. Somalo echoed the concerns of the word “privilege” being politically incorrect, and suggested that if the state of Delaware is going to serve as a model for other states, it would be helpful to find a different word to use.

Ms. Calvachi-Mateyko stated that the word “privilege” is tied to issues of immigration, and sends a message that the card is something that individuals are not normally supposed to have. That line of thinking distracts from the real purpose of issuing the cards, which is safety on the roads.

Senator Townsend stated that the task force should think about at what point they should take action on the language used. The task force should move in the direction of finding out whether they can have any type of card, regardless of the language used. However, the Senator said he does not want to dismiss the issue of language because it is important.

Ms. Velasquez stated that the LACC did a survey of the undocumented community to see if they would be willing to try to obtain driving privilege cards knowing that they would be at risk of being identified and possibly targeted. Out of almost 1,600 respondents who are undocumented, 93% indicated they would pursue getting a card knowing that it only applies to driving in Delaware and only authorizes driving. 84% of respondents would be willing to pursue such cards knowing that they cannot be used for official identification purposes.

She further stated that there may be some confusion over using the cards for identification; for example, while the cards would definitely not be federally compliant and be suitable for boarding airplanes, they would still show identity and possibly be used at the library. She believes this is something that can be further explored.

Additionally, 76% of survey respondents said they would get a card even if it looked markedly different than a driver’s license. 96% of respondents would get a card if it looked very similar to a driver’s license, but was marked “not for identification purposes.”

Overall, the community is willing to pursue cards if they become available. Furthermore, evidence indicates that the undocumented community is willing to obtain whatever they can. For instance, if they can obtain insurance but not a license, they will go through with getting insurance. The community wants to come out of the shadows and do things legally.

Senator Townsend commented that while some people view undocumented immigrants as lawbreakers, anyone who has driven over the speed limit has broken the law too. The Senator stated that he recently went on a ride along with the Wilmington Police Department and spoke to police officers who indicated that in situations in which they pull over suspected undocumented immigrants, they would like to be able to see their names and addresses to help determine whether there is reason to suspect that the individuals are wanted for any crimes. This begs the question of who would be able to access the database of undocumented persons with driving privilege cards. The Senator asked whether other states have allowed law enforcement to access such databases.

Director Cohan stated that if law enforcement had access to the database it would be treated the same way as the database for driver’s licenses. The police would run the driver’s card number and be able to see the driver’s name and address. This could potentially help the situation by reducing fears and the urge for an undocumented motorist to flee from a stop.

Senator Townsend asked if law enforcement or Homeland Security had a say in this. He further indicated that he would like to hear from the Hispanic community to see if this issue is a nonstarter.

Major Melissa Zebley stated it is easier for first responders to see identification credentials during any type of encounter, including accidents and traffic stops. She stressed that implementation is important, as is avoiding the mistakes that have arisen in other states. She further stated that even though the DMV would not be vetting the identities of those issued driving privilege cards, it would be helpful to know that an individual's card was legitimately issued by the DMV. Additionally, she noted the public safety benefit of implementing driving privilege cards.

Senator Townsend asked what currently happens when a vehicle is stopped and an undocumented individual has no credentials.

Major Zebley responded that it depends on the scenario, for example whether there is a crash. Procedures are still carried out and tickets may be issued, which can be frustrating for the individual and result in greater issues down the road for insurance related reasons. Driving privilege cards could mitigate this issue.

Senator Townsend asked what would happen if the incident justifies incarceration and the individual has no form of identification.

Major Zebley responded that a lot of other entities would become involved in the situation to try to establish identity as best as possible. The Major noted that in the past two years, with help of some people present, law enforcement has been able to increase language services for the Hispanic community. Even with such services, a scenario in which no identification is available requires a lot of extra resources.

Mr. Torrijos commented that facial recognition provides some level of identification, even if the cards cannot be used for official identification purposes.

Director Cohan agreed and pointed out that whoever an individual presents themselves as when they apply for a driving privilege card is how they will be identified in the database. Facial recognition will ensure that when an individual renews their card they do not try to use a different name.

Mr. Torrijos followed Director Cohan's statement by asking whether that helps law enforcement when trying to identify people within a database.

Major Zebley responded that it would help, even though the identities of undocumented persons with driving privilege cards are not vetted to the same extent as those with driver's licenses.

Mr. Torrijos stated that the biggest fear in the community is that the information on their cards, regardless of what they are called, would be reported to Immigration and Customs Enforcement (ICE), or Homeland Security.

Ms. Velasquez stated that of those survey respondents who indicated they would not pursue a driving privilege card, 40% would not do so out of fear of being identified or targeted by the police. This fear exists every day in every aspect of life. Most people would prefer to have a way to safely drive their kids to school and to go to work, and so they would risk pursuing a card. A small segment of the population would not take that risk.

Darlene Battle, leadership of the Delaware Alliance for Community Advancement (DACA), stated that there is language that has been used in other states, called the Trust Act, which stipulates that law enforcement cannot turn individuals over to ICE. Ms. Battle indicated that Delaware could utilize this language, and that she could bring the language with her to the next meeting.

Senator Townsend stated this brings back the issue of whether such language crafted into legislation can be enforced since the federal government has more say than the State.

Mr. Holcomb stated that this issue has been litigated in other states, and it has been found that a traffic stop cannot be used to deport someone with undocumented status.

Mr. Somalo stated that the reality is different, and that it happens in many municipalities.

Mr. Holcomb stated that Homeland Security is trying to achieve two objectives. One is to protect citizens of Delaware. If the Department does not see the public safety benefit of issuing driving privilege cards, then they will question the policy. Secondly, the Department is concerned about security and the inappropriate use of these cards for identification purposes. He further stated that such cards should be clearly distinguishable from driver's licenses. If there isn't a clear enough distinction, then there is the potential for unscrupulous individuals to use the cards to gain access to certain things. He stated that if the cards do not look different, then there will be problems.

Senator Townsend asked whether significantly differentiating driving privilege cards would violate the Real ID Act.

Director Cohan responded that it would not violate the Real ID Act. She referred to a mockup of a driving privilege card and indicated that although it looks similar to a driver's license, the colors would be different, the classification is different, and there is strong verbiage on it. When law enforcement would run the cards they would see that they are a different classification. Director Cohan also noted that a lot of color schemes have already been used for different types of licenses, such as CDLs.

Senator Townsend asked for clarification of the pressure implied by the Real ID Act.

Director Cohan responded that there is no pressure from the Real ID Act in the case of driving privilege cards because they are not intended to be compliant driver's licenses. Director Cohan stressed that the DMV would want to keep the same level of card security features that driver's licenses have.

Mr. Torrijos stated it is important for the task force to know what happens when law enforcement stops an undocumented individual, and whether they have a responsibility to report to Immigration and Customs Enforcement (ICE) or Homeland Security. Additionally, this information needs to be conveyed to the community if driving privilege cards are issued.

Mr. Holcomb reiterated that a number of states have litigated the issue. Several states tried to pass a law that would require law enforcement to report undocumented individuals to ICE, but those laws were overturned.

Mr. Torrijos asked for clarification that such reporting laws have not been allowed.

Mr. Holcomb confirmed that laws that have attempted to require reporting have not stood up in court.

Mr. Torrijos asked if there is a memorandum of understanding between the Department of Justice, law enforcement, and Homeland Security.

Mr. Holcomb said he was not aware of such a memorandum.

Mr. Lugg stated his understanding of the statutes Mr. Holcomb mentioned imposes a duty upon law enforcement to report to federal agencies, rather than permission to report, which raises a separate question of whether law enforcement can report even if they are not required to. In cases in which an undocumented individual has already been flagged for something else and is arrested, the severity of the offense and the severity of the flag will matter in terms of reporting. Mr. Lugg does not know whether a

police officer who pulls over undocumented person for a simple traffic violation could report that person to ICE. He stated that he believes Mr. Holcomb is saying the statute cannot mandate reporting, and commented that Delaware would probably not have the resources to comply with such a mandate. Mr. Lugg then cited an example of when he could see an arrest being made during a traffic stop, specifically: if an individual had a felony offense and had unlawfully returned to the country after having been removed from the country once before. However, he does not think that a lot of undocumented individuals are being pulled over for more than just a traffic citation.

Ms. Calvachi-Mateyko stated she accompanied an individual when they received a traffic violation and called a La Esperanza lawyer for that person. The lawyer stated the person had to come in immediately after receiving their first ticket, because after receiving a second ticket a judge can decide to sentence the individual to prison. After a fourth traffic violation the judge can use discretion to charge a person with habitual criminal behavior. Luckily in the case Ms. Calvachi-Mateyko witnessed, the individual was able to pay a fine. However, Ms. Calvachi-Mateyko noted that the reality is that just through traffic violations undocumented immigrants can become part of the criminal justice system, and could be deported.

Mr. Lugg responded there are certain traffic offenses that carry punishment of a certain level that would trigger certain consequences. It used to be felonies, crimes of certain moral turpitude, and punishments that were beyond a year; however, ICE continues to change what they look at. Mr. Lugg clarified that there are two types of habitual offenders. The one relevant to the task force is a Title 21 traffic habitual offender, which is a person who accumulates a certain number of traffic offenses; either a substantial number of lesser offenses, or a smaller number of more serious offenses. If any habitual offender, undocumented or documented, drives after being designated a habitual offender, they face a severe punishment of 90 days of incarceration, which may trigger certain consequences.

That is different than the other, “3 strikes” type of habitual offender that is dealt with in the criminal code. There are a lot of anecdotal stories which may or may not be true. People who come into the system will be treated differently based upon the offense committed, rather than who they are and what their background is.

Ms. Calvachi-Mateyko noted that driving without a license is a crime, which is the problem the task force is trying to address.

Mr. Lugg responded that over time a person that drives without a license could be designated a habitual offender. At that point if the person were to drive again, regardless of background, that person would face serious consequences.

Senator Marshall complimented everyone at the table and stated that the resources available to the task force can move the issue forward. Delaware was recognized as a leading state in voter participation through the DMV. Senator Marshall stated that in a few months the task force should create legislation and pilot a program. The Senator is in favor of creating a friendly card, terming it whatever is agreeable, piloting it, and working out minute details from there.

Claudia Pena Porretti, Executive Director of La Esperanza, echoed what others said and commented that at La Esperanza, the types of cases they see is wide ranging. This includes people being pulled over and not being ticketed, to someone being stopped, driving again, and having ICE waiting with law enforcement to stop that person again. La Esperanza saw an increase in traffic stops over this past summer. In response, La Esperanza came up with a plan to work with the judiciary. She stated that it depends on the law enforcement officer. Depending on the officer involved, there are many traffic stops of undocumented individuals. La Esperanza informs their clients that after so many traffic stops it becomes a felony, which is not good for future immigration reform. She stated that the majority of the community downstate would prefer to have a driving privilege card, and that most of them are not getting stopped. They want to be able to get to school and work. Some people are stopped over and over again, and in some cases just because they do not have a license.

She stated that a member of the judiciary wanted to know how undocumented individuals are able to obtain insurance and vehicle registration without a license. She also voiced concerns over the written portion of the test, since a lot of La Esperanza's clients don't speak English, and in some cases, Spanish is not their first language.

Director Cohan responded that the test is offered in Spanish, but that the dialect is very academic. The DMV does offer the test as an oral exam. However there is a high rate of cheating on the oral exams.

Ms. Porretti said that fortunately most of her clients do not end up in Dover in ICE custody, however some do. This is known as "catch and release," and can be an overwhelming experience when individuals' families do not know where they are.

Mr. Reed stated that while he wants to echo what Senator Marshall and Claudia said, he thinks Delaware should approach the problem in a smart rather than fast way in order to be an example of how to do it right. The task force needs to take unintended consequences into consideration, such as how insurance might rate individuals if they know they own a house. Mr. Reed also noted that cards would provide dignity to undocumented individuals.

Senator Townsend then invited further questions. As there were none, the Senator invited the public to comment.

PUBLIC COMMENT

Reverend Carlos Ochoa stated that he has a Parish in New Castle County and that every day he works with Spanish speaking parishioners who seek a better life in Delaware. There are almost 100,000 Hispanic people in Delaware. There are 10 parishes in Delaware that have Spanish services, and they try to help out with resources. Reverend Ochoa noted that he works not only for the Hispanic population but the whole community. Education is necessary, and there are too many people being taken advantage of. The Reverend noted that some people speak dialects and don't know Spanish. Families are suffering. The parish is working with the Mexican Consulate, which is receptive to issuing passports and facilitating the implementation of driving privilege cards.

Kevin Adrade thanked the members of the task force for addressing the issue, and stated that whether a person is documented or not, they are still human. He pointed out the children of undocumented people will have more and more votes in the near future. The issue needs to be addressed now. He also stated that in Maryland there are training sessions designed to educate undocumented immigrants who may not read or write Spanish. These sessions are successful. Whatever needs to be done in the Hispanic community to successfully educate, test, and provide cards to undocumented persons should be done. This could include classes through churches and media.

CONCLUSION

Senator Townsend stated he would like to rotate locations between Buena Vista and Legislative Hall, noting Director Cohan has offered space at the DMV in Dover to hold meetings as well. The Senator echoed Senator Marshall's statement about getting things done but also doing them right. He does not want to just pass a bill, but instead wants to think through all the implications. He would like the task force to be able to have solid recommendations in a report to give to the General Assembly. Senator Townsend understands this will take time.

The meeting was adjourned at 6:28 pm.

Division of Motor Vehicles Presentation to the Undocumented Motorist Safety and Insurance Task Force

February 18, 2014
Buena Vista
Jennifer Cohan, Director
Division of Motor Vehicles



Driving Privilege Card - Option

- Current situation in Delaware
 - Estimated 35,000 undocumented individuals in Delaware
 - No current mechanism to issue driving license or identification to undocumented individuals
 - Delaware is federally compliant with the Real ID Act of 2005
 - Considered the national leader in Secure DL/ID Management
 - Increasing number of individuals driving without basic knowledge of the rules of the road

Driving Privilege Card - Option

- Current situation in Delaware cont.
 - Federal Department of Homeland Security
 - Driving Privilege Card is permissible as long as it is clearly marked not for identification purposes
 - Both the current compliant and non-compliant drivers license require legal presence
 - Will need to create a third tier driving privilege category
 - Look different (variable)
 - Allow for driving privileges only

Identity Management

- DMV Role in Identity Management
 - History
 - Homeland security aspects
 - 911 Commission
 - Real ID Act
 - Public safety
 - Ensure safety of drivers on roadways
 - Reduces fraud/identity theft
 - Private/Public sector reliance



What are other States doing?



- Illinois
 - Law effective November 2013 (issued 1,200 so far)
 - Temporary visitors driver license
 - Valid for 3 years
 - One year residence required
 - Must be ineligible for SSN
 - Photo/facial recognition

What are other States doing?



- New Mexico
 - Driver License issued
 - No SSN – Tax ID used
 - In place for over three years
 - Fraudulent activity increased over 50%
 - Criminal activity as far away as North Carolina
 - Attempting to repeal and revise current regulations
 - Zero impact on reducing uninsured motorist
 - Zero impact on crash reduction/public safety

What are other States doing?



- Utah
 - Issues Driving Privilege Card
 - Not valid for identification purposes
 - Must be ineligible for SSN
 - Fingerprinting and photo required of all applicants
 - Amendment
 - Attempts to repeal each legislative session

What are other States doing?



- Washington
 - License labeled “not valid for identification purposes”
 - Job driven/Apple Industry

What are other States doing?



- Nevada
 - Began issuing Driver Authorization Cards January 2, 2014
 - Testing issues
 - Valid for one year

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What are other States doing?



- Maryland
 - Effective January 1, 2014
 - Two years of tax documentation
 - Alternative documentation for identity
 - Valid foreign passport
 - Appointment only service
 - Marked "Not for Federal Identification"

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What are other States doing?



- Connecticut
 - Task force to determine how to implement in early 2014
 - Non Compliant Card Issue only

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What are other States doing?



- California
 - Marked "DP" for driving privilege only
 - States Not for Official Federal Purposes
 - Also states, it does not establish eligibility for employment, voter registration, or public benefits."

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Possible Delaware Driving Privilege Card

- Complete Driver Testing Requirements
 - Written Test
 - Vision Test
 - Road Test
- Two Years Filed Delaware Income Tax Returns
 - Or dependent claimed on Tax Returns
- Valid for four years
 - Same fee - \$20 (four years X \$5)



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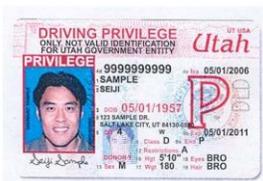
Driving Privilege Card Implications

- Opportunities
 - Increase licensed drivers meeting minimum road safety standards
 - Crash reduction
 - May create a reduction in uninsured motorists on Delaware roadways
 - May decrease in the number of undocumented individuals avoiding contact with state and local law enforcement
- Challenges
 - Cost of issuance
 - Increase of other state residents coming to DE for card
 - Cards could be viewed as legitimizing undocumented immigrants
 - Reciprocity and consistency problems between states
 - Law enforcement confusion
 - Centralized data and information

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Sample Driving Privilege Card

- Recommendation – if we move forward
 - Two years tax forms
 - Physical card security
 - Ineligibility for SSN
 - Clearly distinguishable from existing Driver License(s)
 - Phased implementation
 - via regulations



Utah Driving Privilege Card

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