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Governor Vetoes Driver's License Bill

This month, Gov. Arnold Schwarzenegger vetoed legislation that would have allowed illegal immigrants to apply for California driver's licenses with a strong statement saying the bill did not meet his security concerns.

The governor dispensed with perhaps the most emotionally charged bill on his desk with a four-line veto message.

"One of the most important duties of the governor of a state is to protect its citizens," Schwarzenegger said. "This bill does not adequately address the security concerns that my Department of Homeland Security and I have, and I cannot support it."

The measure, AB 2895 by Assembly Speaker Fabian Núñez, was originally introduced as SB 1160 in the Senate by Sen. Gil Cedillo, D-Los Angeles.



Cedillo, who earlier accused the governor of renegeing on a promise to sign a driver's license bill, said he was "disappointed, but I'm not discouraged."

"I disagree with the governor, but I'm prepared to engage him in dialogue on the question of security," he said. "The fact of the matter is 2 million immigrants in California will still be driving tomorrow without a license, and we would have preferred that they were tested, licensed and insured. So this issue doesn't go away."

Cedillo has vowed to introduce another license bill when the Legislature convenes in December. Ten states allow illegal immigrants to drive.

"As the governor might say, 'I'll be back,'" Cedillo said, invoking one of the former actor's best-known movie lines.

In a prepared statement, Núñez said Schwarzenegger's veto message "lacks any clarity with regard to what legislative proposal the governor would find acceptable."

"Considering that he gave his word that he would work with the Legislature on an acceptable bill, we are now back to square one," he said.

Núñez said restoring the right of illegal immigrants to drive, as they were able to in California until 1994, would have ensured that all drivers in the state are tested, licensed and insured, and would have enhanced public safety.

Under the legislation that Schwarzenegger vetoed, applicants would have been required to submit to criminal background checks and be fingerprinted. Anyone with a criminal conviction would have been ineligible.

In addition, applicants would have had to produce a birth certificate, proof of California address, another official form of ID and other supporting information.

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Governor Vetoes Driver's License Bill

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Illegal immigrants from Iraq, Cuba, Libya, North Korea and other countries considered to be sponsors of terrorism would not have been allowed to procure licenses.

Critics of SB 1160 argued illegal residents do not deserve the right to drive because they are breaking the law by being in the country illegally. They also warned that driver's licenses potentially could be used by terrorists to rent vehicles and buy materials for an attack.

Assembly Republican leader Kevin McCarthy of Bakersfield lauded the governor for vetoing the legislation.

"Californians have made it clear that they want the Legislature to put this issue to rest," McCarthy said in a prepared statement.

Mike Spence, president of the conservative California Republican Assembly, also praised Schwarzenegger's decision.

"It showed the governor is with the majority of Californians who reject licenses for illegals, but it also highlights the need to make this permanent, so that it's no longer an issue the Legislature can decide," he said.

Last year, after the Legislature repealed the Davis license bill, Spence's group dropped plans to put an initiative on the ballot that would have allowed voters to do the same.

Spence said his group will begin collecting the necessary 600,000 signatures of registered voters to place another initiative on the 2006 primary ballot. The measure would prohibit the state from issuing driver's licenses to illegal immigrants and from giving other benefits, including money for college.

Ann Marie Tallman, president and general counsel of the Mexican American Legal Defense and Education Fund, said her group was "profoundly disappointed" in the governor's decision.

"The governor's veto is even more regrettable given his public statements that immigrants should be allowed to obtain a driver's license," she said in a statement, adding that the measure "would have ensured that a significant, reliable and hard-working segment of our state's work force be able to safely drive to and from work."

"Immigrants are a critical component of and significant contributor to our state's economy," she said. "It is baffling that the governor would deny them the ability to fully participate in making our state's economy even stronger."

Anti-Matricula Measure Defeated in the House

On September 14th, by a vote of 222 to 177, the House of Representatives removed a provision from a spending bill that would have prohibited the Treasury Department from implementing regulations

that allow financial institutions to accept matricula consular identification cards as part of a valid customer identification program. The Matricula Consular is internationally recognized as a valid form of identification, much like the consular registration issued by the U.S. State Department to our citizens living abroad. More than 160 counties, 1180 police departments, 377 cities, 33 states and 178 financial institutions support the use of matricula consulars as a means to establish identity, reduce crime and violence, improve the U.S. economy, and strengthen our line of defense against terrorists attempting to gain access to our financial institutions.



This vote was the latest in a series of successful attempts to defeat anti-immigrant measures. The defeated measure, authored by Representative Culberson (R-TX), was originally introduced as an amendment to the fiscal year 2005 Transportation, Treasury and Independent Agencies appropriations bill as it passed through the Transportation, Treasury and Independent Agencies Subcommittee of the House Appropriations Committee on July 15. Representative Tom Tancredo (R-CO) also has repeatedly introduced restrictionist measures, none of which have advanced in the House.

Warning Re DV Lottery Scam

It has been reported that an e-mail is being sent to some people purporting to be from "dvlottery.state.gov", telling people that are "one of the lucky winners" of the DV2004 visa lottery, and requesting that they send \$349.67 in "clearance/acceptance fees". These emails are fakes, and should be ignored.

Civil Liberties Restoration Act Introduced

Legislation introduced on June 8 would address policies implemented since September 11 that have debased our country's fundamental commitment to individual liberties and due process. These policies, including detentions for months without charges, secret hearings, and ethnic profiling, signal a sea change in our government's policies and attitudes towards immigrants. With the introduction of the Civil Liberties Restoration Act of 2004 (CLRA) (S. 2528/H.R. 4591), Senators Kennedy (D-MA), Leahy (D-VT), Durbin (D-IL), Feingold (D-WI), and Corzine (D-NJ) and Representatives Berman (D-CA) and Delahunt (D-MA) and others take an important step towards redressing these abuses and reining-in the Bush Administration's overreaching actions.



The CLRA would roll back, in a targeted and responsible manner, the excesses of the government's response to the threat of terrorism. The bill includes the following provisions that seek to ensure that immigrants are treated with the fairness and respect that our Constitution requires:

End Secret Hearings. The CLRA would end the government's ability to issue a blanket order closing all deportation hearings to the public and to family members of detainees, while permitting the closure of hearings or a portion of hearings on a case-by-case basis to preserve the confidentiality of asylum applications or when national security interests so require.

Ensure Due Process for Detained Individuals. The CLRA would provide minimum due process safeguards to individuals who are jailed on suspicion of immigration violations by giving them timely notice of the charges against them and assure that immigration authorities and judges make fair, individualized bond determinations. Establish Independent Immigration Court. The CLRA would establish an independent immigration court within the Department of Justice and promote fair hearings by a competent, independent and impartial tribunal.

National Security Entry-Exit Registration System while encouraging fairness and a concentrated focus on those who pose a threat to the national security or safety of Americans.

Make Penalties Commensurate with Violations. The CLRA would assign reasonable penalties, commensurate with the technical nature of the violations, for noncitizens' failure to register or provide timely notification of address changes.

Require Accurate Criminal Databases. The CLRA would facilitate better law enforcement practices by requiring that the National Crime Information Center database relied upon daily by state and local law enforcement comply with minimum accuracy requirements.

Ensure Access to Evidence. The CLRA would ensure that people who are charged with a crime based upon national security surveillance under the PATRIOT Act would see the evidence against them in the same manner as people charged with a crime based upon other kinds of classified information.

Mandate Reports on Data-Mining. The CLRA would require the government to submit a public report to Congress on data-mining activities in order to protect the privacy and due process rights of individuals and to ensure accurate information is collected and used.

Limit Secret Seizures of Records. The House version of the CLRA would amend the USA PATRIOT Act to limit the secret seizure of private databases and individual records to cases where the government has shown there is a reasonable connection to a suspected terrorist or terrorist group.

We are a nation of immigrants with a long tradition of welcoming newcomers. Government policies that unfairly and inappropriately confuse immigration with terrorism do not make us safer—they tarnish our heritage, and damage our standing abroad. Security experts, government auditors and community leaders have concluded that many of the government's policies actually undermine our security, while eroding fundamental civil liberties. Measures that make people suspect because of their ethnicity or religion, rather than suspicious activity, alienate immigrant communities, divert valuable resources from finding real terrorists, and ignore this nation's commitment to freedom from heavy-handed government tactics.

CLEAR Act Amendment Defeated

During floor debate of the Commerce-Justice-State Appropriations bill for fiscal year 2005, Representative Steve King (R-IA) introduced another CLEAR Act spin-off amendment. The King amendment, which was soundly defeated in a 278-139 vote, sought to allocate one million dollars of funding towards the enforcement of an IIRAIRA provision that prohibits restrictions on the flow of information about a foreign national's immigration status between state and federal government actors. As Representative Luis Gutierrez (D-IL) put it in his opposition to the amendment, "the King amendment is a recycled effort to try to coerce local police officers to act as federal immigration agents." This measure was just the latest attempt by immigration opponents in the House of Representatives to amend spending bills with CLEAR Act-related provisions. Not surprisingly, they have failed time and again to garner support because the large majority of Representatives understand that the policy will undermine, not enhance, public safety.

The King amendment proposed to fund this enforcement mandate through a concomitant reduction in the Department of Justice (DOJ) budget. In other words, Representative King sought to sacrifice one million dollars of DOJ funding for criminal and terrorism enforcement activities to try and punish states and localities for policies they have adopted to make their communities safe.

President Signs Legislation Containing Very Narrowly Targeted H-2B Fix

President Bush, on August 5, signed into law legislation containing extremely narrowly tailored H-2B relief. The 2005 Department of Defense (DOD) Appropriations Act (H.R. 4613, Pub. L. No. 108-287) includes a provision exempting fish roe processors, technicians, and supervisors from the H-2B cap.

As background, the H-2B cap was reached just six months into this fiscal year, at which point immigration advocates joined with coalition partners in the business community to work for an increase in access to H-2B workers. Several bills were introduced, but were blocked by Senators Jon Kyl (R-AZ) and Jeff Sessions (R-AL), both of whom sought unacceptable changes in other areas of immigration in exchange for an increase in this year's H-2B numbers. Ultimately, Senator Ted Stevens (R-AK) successfully amended the DOD bill to include the narrowly targeted relief for fish roe workers.

Recent Regulations in the Department of Homeland Security

The DHS issued a variety of new regulations and notices in recent weeks. A brief summary of these items follows.

Interim Rule Expands, Amends US-VISIT. Effective September 30, the interim rule expands the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) program to the 50 most highly trafficked land border ports of entry in the United States. These 50 land borders will be integrated into the US-VISIT program following identification in Notices published in the Federal Register, with all 50 ports of entry to be identified no later than December 31, 2004.

The interim rule also further defines the population of aliens who are required to provide biometric identifiers and other identifying information under the US-VISIT program. First, the Department of Homeland Security (DHS) may require biometric data collection from nonimmigrant aliens who are visa exempt under the Visa Waiver Program (VWP). While the interim rule provides that DHS has the authority to require Mexican nationals who present a Border Crossing Card (BCC) to provide biometric data upon arrival in, or departure from, the United States, the Secretaries of DHS and the Department of State (DOS) have jointly determined that BCC travelers who are not required to be issued a Form I-94 Arrival/Departure Record at the time of admission are exempt from the US-VISIT biometric data collection requirements. Second, certain officials of the Taipei Economic and Cultural Representative Office are exempt from the US-VISIT biometric data collection requirements. Third, crewmembers applying for landing privileges may be required to provide biometric data under US-VISIT. The interim rule also makes technical changes to US-VISIT as a result of comments received by DHS on the January 5, 2004 interim rule. Finally, DHS solicits public comment on all aspects of the operation of US-VISIT to date, as well as the expansion of US-VISIT pursuant to this interim rule. Written comments must be submitted on or before November 1.

DHS, Redesignates Liberia Under the TPS Program. The DHS's Bureau of Citizenship and Immigration Services (USCIS), on August 25, published a notice in the Federal Register terminating the current designation of Liberia and redesignating Liberia for Temporary Protected Status (TPS). The redesignation will allow nationals of Liberia who have been continuously physically present in the United States since August 25, 2004, and continuously resided in the United States since October 1, 2002, to apply for TPS. The notice also sets forth procedures necessary for nationals of Liberia to register for TPS. All current Liberian TPS beneficiaries who wish to continue to receive TPS benefits will have to register for TPS according to the procedures set forth in the notice. The redesignation of Liberia under the TPS program is effective October 1, 2004, and will remain in effect until October 1, 2005. The registration period begins August 25, 2004, and will remain in effect until February 21, 2005.

H Visa Blackout Imminent

Unless Congress acts soon, U.S. employers could experience an H visa “blackout” early in fiscal year (FY) 2005 (which begins on October 1, 2004). The FY 2005 H-1B cap is expected to be reached shortly after the start of the fiscal year, and the H-2B cap is likely to be reached in early January if not sooner. Take action by contacting your Senators and Representatives. Details follow.

H-1B Relief Urgently Needed. As of August 18, U.S. Citizenship and Immigration Services (USCIS) reportedly had received 45,900 petitions that will count against the FY 2005 cap of 65,000. At this rate, the FY 2005 cap could be hit by the start of the upcoming fiscal year.

Without relief, employers could be barred from petitioning for new H-1Bs for almost all of FY 2005. This H-1B blackout will follow on the heels of the seven-month blackout that occurred after the FY 2004 cap was reached five months into that fiscal year.

Without access to H-1B visas, U.S. employers will be unable to hire the professional staff they need—often recent graduates from the top U.S. universities with Masters and Ph.D. degrees in math and the sciences—to develop new products, engage in groundbreaking research, implement new projects, expand operations, create new jobs, and compete in the global marketplace. There

still are not enough U.S. students graduating with advanced degrees to fill these highly specialized positions and, according to the Bureau of Labor Statistics (BLS), the demand for these graduates will only increase. Foreign students represent half of all U.S. graduate enrollments in engineering, math and computer science.

Complicating matters is the fact that legislation implementing the free trade agreements (FTAs) with Chile and Singapore reduced the size of the H-1B cap to 58,200 visas per fiscal year—the most restrictive that this cap has ever been. According to the law, any numbers unused under those FTAs at fiscal year’s end are added back into the quota, but can only be used for adjudications during the first 45 days of the new fiscal year. Given the bureaucratic delays and inefficiencies inherent in USCIS, it remains unclear if the agency will be able to add back these leftover numbers into the overall cap on a timely basis.

If we cannot keep this U.S.-educated talent in the U.S., our competitors abroad will profit. Several European countries recently have updated their immigration laws to attract highly educated talent. A workable H-1B program that gives U.S. employers the access they need to highly educated professionals will keep the world’s brightest minds in the U.S. and help retain American jobs.

Recently Introduced Legislation

The following is a brief description of newly introduced, immigration-related legislation, in reverse chronological order and by chamber. WorldEsquire will report further on these bills if and when they move through the legislative process.

House Legislation

H.R. 5058, introduced on September 9 by Representative E. Clay Shaw, Jr. (R-FL), would amend the Immigration and Nationality Act to permit alien children receiving medical treatment in the United States to be classified as immediate relatives to avoid extreme hardship to themselves or their immediate relative alien parents.

H.R. 5040, the 9/11 Commission Report Implementation Act of 2004, introduced on September 9 by Representative Christopher Shays (R-CT), would implement the various recommendations of the National Commission on Terrorist Attacks Upon the United States (9/11 Commission). Senator John McCain introduced the Senate companion bill (S. 2774).

H.R. 5024, the 9/11 Commission Recommendations Implementation Act of 2004, introduced on September 8 by Representative Nancy Pelosi (D-CA), is another of the several bills

being offered to implement the recommendations of the 9/11 Commission.

H.J. Res. 104, a joint resolution introduced on September 15 by Representative Dana Rohrabacher (R-CA), proposes an amendment to the Constitution of the United States to make eligible for the Office of President a person who is not a natural born citizen of the United States but has been a United States citizen for at least 20 years.

Senate Legislation

S. 2792, introduced on September 13 by Senator Susan Collins (R-ME), would amend INA § 214(c)(4)(A)(1) to permit foreign athletes to receive nonimmigrant alien status under certain conditions.

S. 2774, the 9/11 Commission Report Implementation Act of 2004, introduced on September 8 by Senator John McCain (R-AZ), would implement the various recommendations of the 9/11 Commission. Representative Christopher Shays introduced the House companion bill (H.R. 5040).

House Subcommittee Votes to Eliminate Diversity Visa Program; Approves I-9 Recordkeeping Bill

On September 14, the House Judiciary Subcommittee on Immigration and Border Security and Claims marked-up two immigration-related bills, H.R. 775 and H.R. 4306.

The first bill (H.R. 775), introduced by Representative Bob Goodlatte (R-VA), would completely eliminate the diversity visa program, which was created to ensure that our nation benefited from the contributions of a diverse group of immigrants who shared the American dream. At a time when legal immigration channels are needed to improve our national security and regularize our cross border flow, this bill goes in the opposite direction and would eliminate one of the few legal channels by which foreign nationals may migrate to the U.S.

H.R. 775 was approved in the subcommittee by a 5 to 3 vote and referred to the full Judiciary committee for review. Voting for the bill were Chairman John Hostettler (R-IN), Representatives Jeff

Flake (R-AZ), Elton Gallegly (R-CA), Steve King (R-IA), and Melissa Hart (R-PA). Voting against the bill were Ranking Member Sheila Jackson Lee (D-TX), Linda Sanchez (D-CA), and Zoe Lofgren (D-CA). It is unclear how or if H.R. 775 will move through Congress. We will report further on any progression this bill may make.

The second bill (H.R. 4306), introduced by Representative Chris Cannon (R-UT), enjoys bipartisan support. This bill would amend section 247A of the Immigration and Nationality Act to allow employers to maintain electronic or paper I-9 forms that verify an employee's work eligibility. An approved amendment to H.R. 4306 also added microfiche and microfilm as permissible forms of retention. This bill was approved by voice vote and referred to the full Judiciary committee for review.

In Closing..

At WorldEsquire Law Firm, our goal is to make our newsletter informative, easy to understand and a pleasure to read. We appreciate your comments and suggestions. Don't forget to visit our website, as we have a multitude of information and links available to you.

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