

ISSUE POLICY BRIEF:

ON BMV REGISTRATION POLICY CHANGES

Prepared by Florentina Staigers, Public Policy Center

to the honorable members of the Ohio Commission on Hispanic/Latino Affairs

Official Statement

Based upon requests from constituents and from the Board of Commissioners, and consistent with the statutory mandates of the Ohio Latino Affairs Commission, the Office of Latino Affairs is working on the following initiatives in response to community concerns surrounding the Ohio Bureau of Motor Vehicle (BMV) Registration Cancellation letters of October 2009. The Office of Latino Affairs is:

- Producing a series of policy briefs and reports to help advise policymakers and inform community leaders as they respond to issues and deal with the consequences of the Ohio BMV policy & implementation.
- Requesting meetings with agency officials to gather additional information on behalf of the Board of Commissioners.
- Observing community meetings to help guide prudent community responses and engagement in the public policy process.

The Ohio Latino Affairs Commission is a state government agency with a statutory mandate to advise policy makers and elected officials on issues affecting Hispanic Ohioans, to connect the diverse Latino communities across the state, and to build the capacity of community organizations so they may better serve the fast growing Latino population of Ohio.

Media Talking Points

If contacted by the media to comment on the registration issue, the office recommends framing the registration issue as part of the larger problem of a broken immigration system. For example:

- It is a consequence of a broken immigration system that the registration policy changes are even an issue.
- There are many people working and living in Ohio who want to become legal and follow all the laws, including registration requirements, but unfortunately, under the current system of immigration laws there is no real way for them to do this.
- Everyone wants to ensure that Ohio roads are safe and secure, and any policy aimed at this must seek to register every Ohio vehicle and identify their owners.



Action Steps

In accordance with our official statements, the office has completed the following action steps:

- A community issue brief regarding the policy changes (see attached).
- This issue brief to the members of the Board of Commissioners.
- A request to the Dept. of Public Safety to disaggregate data on to whom the October 8, letters were sent.
- A November 4, 2009 email sent to community contacts asking for feedback on the policy change to include in a report to public officials.
- Attended community meetings on 10/20/2009, 10/27/02, and 10/31/09.
- Responded to constituent calls and emails.

The following action steps will be completed:

- Providing a report to public officials regarding community reaction.
- Meeting with public officials.

Other Aspects of the Issue That May Need Addressed

- Federal immigration reform.
- Identification/Driver's License.
- Unscrupulous business owners who will take advantage of immigrants.
- Economic impact of the policy and of immigrants in Ohio.
- Other ways of helping immigrants adjust to the policy changes when the policy takes affect.
Examples include:
 - connecting them with public transportation entities
 - housing legal clinics
 - carpool information.

Additional Information

Attached to this report is the following information pertinent to this brief:

- Community Issue Brief prepared by the Public Policy Center Program Director.
- BMV Myths v. Facts: Registration Power of Attorney Policy.

Prepared and Submitted on 6 November 2009.



COMMUNITY ISSUE BRIEF:

ON BMV REGISTRATION POLICY CHANGES

Prepared by Florentina Staigers, Public Policy Center

to Latino community members

Background and Context

As the national immigration debate reached a peak and then reform legislation failed, the immigration battle moved to a different front: the states. As a result, for the past several years, Ohio has seen a surge of proposed legislation and policy changes affecting the Latino community as well as increased anti-immigrant sentiment in the media. Ohio Latino stakeholders have gathered together from across the state to respond to each of these individual challenges such as English-Only legislation, the “Ohio Illegal Alien Enforcement Act,” the Koch Food ICE Raids and other raids, the Mt. Vernon hate crime rally, etc. However, the larger issue of immigration reform has yet to receive the attention, commitment, and collaboration from the Latino community that each of these other matters has been able to capture even though all of these issues have been a consequence of the broken immigration system.

Thus, as the community evaluates and addresses the registration policy changes, it is critical to consider the context. Instead of once again *only* reacting to the short-term issue, it is time to also begin a dialogue on how the Ohio Latino community is going to affect the larger issue of immigration reform.

History

In 2008, then Director of the Ohio Department of Public Safety (DPS), Henry Guzman, sought to close a loophole in the law that allowed those with acceptable identification to obtain vehicle registrations for those without it. The loophole had existed for several years prior. Director Guzman ordered toughened regulations to close the loophole. However, Director Guzman, delayed implementation of the new regulations based on concerns brought to his attention by business owners, in order to allow time for better understanding and to correct any identified problems. Based on concerns brought up at the meeting, Director Guzman declared a moratorium on his policy in order to allow time for better understanding and identify problems that would need to be corrected. Ultimately, Director Guzman implemented the policy on August 24, 2009 before his tenure at DPS ended.



Policy

On October 8, 2009, the Ohio Bureau of Motor Vehicles (BMV), which is part of DPS, issued a letter to 47,457 vehicle owners informing them that their registrations will be canceled unless they can provide a valid Ohio driver's license, identification card or social security number by appearing in person at the BMV by December 8, 2009.

The letter required that all registrants of the vehicle appear:

- 1) in person
- 2) at a local BMV deputy registrar
- 3) within 60 days

and must provide the following information in order prevent their registration from being canceled:

- 1) A valid Ohio driver's license, identification card or social security number. (in accordance with Ohio Revised Code § 4503.10)
- 2) The October 8, 2009 letter sent by the BMV
- 3) \$3.50 in cash, money order, or check.

For those unable to provide the information, the vehicle registration will be canceled. If the vehicle registration is canceled, an administrative hearing may be requested.

Direct Consequences of the Policy Change

Failure to Register and Display Registration

Those who are not able to properly register their vehicles will be in violation of the law and subject to stops by law enforcement officials. Failure to register a vehicle is a violation of the law and is a fourth degree misdemeanor, which is subject to penalties of a maximum of 30 days in jail and \$250 in fines (ORC § 4503.11). Furthermore, failure to *display* registration on the vehicle is a minor misdemeanor, subject to a penalty of a maximum of \$150. (ORC § 4503.21) When a law enforcement officer has reasonable suspicion that a person has been, is, or is about to be engaged in criminal activity the law enforcement officer may conduct an investigatory stop (*Terry v. Ohio*, 392 U.S. 1 (1968)). Thus, a law enforcement officer may stop a vehicle that does not display the vehicle's registration and accompanying identification stickers required by each county.

Vulnerability to Unscrupulous Practices

Moreover, persons affected by the policy change who are not able to register their vehicles will be vulnerable to unscrupulous business owners who are seeking to exploit other loopholes. For instance, business owners are offering to charge clients for "creating and registering" a business and then registering a vehicle under the "business name" despite the potential illegality of this alternative. The Ohio Revised Code also states that "where a motor vehicle to be registered is used "principally in connection with any established business" then the applicant for registration may provide the owner's federal taxpayer identification number instead of a social security number, state identification number, or driver's license number." Thus, if one is using a taxpayer identification number to register a vehicle for a business it must be "an established business." Furthermore, anyone who "makes a false statement in a registration application" is guilty of a first degree misdemeanor, which is punishable by up to six months in jail and a \$1,000 fine.



9/21/09

Myths vs. Facts: Vehicle Registration Power of Attorney Policy



Note: This document is intended to clear up misinformation reported by the media and other sources regarding the Department's development and implementation of a verification policy for vehicle registration records. This issue deals only with the vehicle registration process, which is separate from the process of issuing driver license and state identification cards.

Background Information:

- You are not required to have a driver license to register a vehicle in the state of Ohio.
- Prior to Sept. 2007, you were only required to provide a social security number, if ever assigned, to register a vehicle. HB 67 (effective Sept. 1, 2007) allowed the option of the BMV taking a state of Ohio driver license or ID card in lieu of social security number when registering a vehicle. This bill dealt only with the information the BMV was able to accept for vehicle registration purposes, not the verification of this information.
- In Jan. 2008, Director Guzmán directed BMV senior staff to develop a process to verify information being provided to the BMV for the vehicle registration process after a high-profile fatal crash in Franklin County brought to light the loophole that allowed for the potential of fraud during the vehicle registration process. While the loophole had existed for many years previously, this was the first serious attempt by any administration or any Public Safety Director to address the issue.
- The original policy that was drafted took close to eight months to develop and was complicated to the point that diagrams and flow charts were developed to try to explain the process to internal staff. At one point, field staff sent a list of 22 questions regarding the new process.

Overview of Policy Development Process:

The difficulty of developing verification procedures that would catch fraudulent activity while preserving the ability of Ohio residents to easily obtain vehicle registrations and not unreasonably burdening Ohio businesses cannot be understated. The forms and procedures went through many drafts, and implementation issues were often raised by deputy registrars and BMV field staff.

After Director Guzmán's Jan. 2008 request to develop a verification process, a working group was formed. The challenge facing the working group was to not only prevent fraudulent transactions, but to ensure that the overwhelming majority of legitimate customers would not be prevented from obtaining vehicle registrations in a timely manner, and that Ohio businesses, like auto dealers, who make extensive use of POA forms, would not be unduly burdened. This was not a quick process. For example, in one e-mail to attorneys on Feb. 23, 2008 the Registrar noted that "the complex aspects/impacts of this legislatively mandated piece required some extra time." (Note: the "legislatively mandated" statement by the former Registrar was not accurate. These changes were not then, nor are they now, legislatively mandated.)

In April 2008, the BMV sent a draft of potential changes to their field staff and deputy registrars for input. The responses from the field raised significant concerns about implementation. As the original proposal was finalized in May 2008, the Registrar noted that the BMV would be "required to implement an internal and external education piece" to include DRs, dealers, attorneys, courts, law enforcement and a BMV staffer noted that "the idea is not to inconvenience the majority of customers to stop fraud with a smaller percentage of our customers." Legal advice was still being sought in May 2008 and a proposed July 1, 2008 implementation date was pushed back to Aug. 1, 2008 to allow for proper education and implementation.

The original verification policy was suspended by the Director on July 31, 2008 following a meeting auto dealers and insurance company representatives, community members, ODPS legal staff, Communications Staff, BMV staff and Director Guzmán. At the meeting, concerns about implementation from Ohio businesses, including auto dealers and insurance companies, as well as additional legal issues raised by the community, were raised. Director Guzmán imposed a moratorium on implementation so that the concerns raised could be addressed.

Upon taking time to try to better educate businesses and the community, answering their questions and trying to address concerns, it was agreed by all that re-working the policy would provide a better product to serve all of our customers. BMV staff suggested revisions to the policy and work began to revise the process.

While the revision process took longer than anticipated and longer than anyone would have liked, the policy, as currently implemented, combined with the new proof of residency rules, helps Ohio take significant steps toward a secure, reliable process for issuing vehicle registrations, without unduly burdening the vast majority of Ohioans who count on a safe, efficient process for completing these transactions to go about their daily business and livelihoods.

Myths vs. Facts: Vehicle Registration Power of Attorney Policy



Myth: HB 67 required additional verification of information provided for vehicle registrations.

Fact: False. HB 67 allowed for additional options for what information can be provided to register a vehicle by allowing the option of providing a driver license or identification card number instead of a social security number when registering a vehicle. Social security number remained a valid identifier for those who do not have an Ohio DL or ID.

There was some confusion within the BMV regarding the requirements under the Revised Code that the HB 67 required a verification of this information when it did not. The BMV put the procedure in place to accept driver license, identification card or SSN for the Sept. 1 effective date of the bill. As part of this process, the BMV did investigate the possibility of verifying this information, but there were many legal questions regarding the implementation of such a policy. The process of developing a policy regarding how to verify the information began in earnest in Jan. 2008 after Director Guzmán's request that the BMV establish a standard procedure for doing so.

Myth: This loophole has allowed fraudulent activity in issuing driver licenses and identification cards.

Fact: False. Vehicle registration is a separate process from the process of issuing driver licenses. The issue at hand deals only with the process used to verify identity during the vehicle registration process. In fact, the BMV has taken several steps in the past year that have significantly increased the security of issuing driver licenses including the implementation of a new procedure to verify identity through an additional photo being taken when issuing a temporary permit, CDL or motorcycle endorsement (DX BASS, Dec. 2008) as well as releasing a new format of the state driver license that includes new security features (July 2009). In order to obtain any Ohio driver's license, commercial driver's license (CDL), identification (ID) card or duplicate of any of these items, the customer, and any co-signer for a minor applicant must present a primary and a secondary document satisfactory to prove both: (1) Name and Date of Birth and (2) SSN, if ever assigned. (Ohio Administrative Code Sections 4501:1-1-19, 21, 22). Additionally, non-U.S. citizens are required to provide proof of legal presence before an Ohio driver's license or identification card can be issued. Lists of acceptable documents to prove all of these things can be found at: http://bmv.ohio.gov/driver_license/aid.htm.

Myth: State Public Safety Director Henry Guzmán delayed the implementation of a verification process for more than a year after he met with people who cater to such immigrants, including people who were profiting from obtaining plates.

Fact: False. This statement is incomplete. The Columbus Dispatch and other media outlets were provided with information showing the Department met with: auto dealers and insurance company representatives, community members, ODPS legal staff, Communications Staff, BMV staff and Director Guzmán. At the meeting, concerns about implementation from Ohio businesses, including auto dealers and insurance companies, as well as additional legal and implementation questions from the community, were raised. After hearing these legitimate concerns, Director Guzmán agreed to temporarily suspend an planned verification policy (original implementation date was to be Aug. 1, 2008) to allow time for better understanding - and offered those businesses, financial institutions and community members the opportunity to work with our BMV staff to better understand the policy as well as make suggestions as to how the policy could be better implemented. While he did agree to temporarily suspend the original policy, he was clear that it would only be temporary.

Director Guzmán expected that those businesses, financial institutions and community members would have the opportunity to work with BMV staff to better understand the policy as well as make suggestions as to how the policy could be better implemented.

What the BMV actually found upon taking time to try to better educate businesses and the community, was that it had not in fact, developed the best possible policy to serve our customers. BMV staff was directed to re-work the policy to better address the needs of the thousands of people who legitimately use this process each year. Work began to revise the policy so that it met the needs of all customers, while also achieving the goal of reducing fraud. A revised process was given to Director Guzmán on June 26, 2009 for review and signature. After making brief comments, the Director signed off on the policy and it was moving through the implementation process in early July 2009. The policy was effective statewide on Aug. 24, 2009.

Myths vs. Facts: Vehicle Registration Power of Attorney Policy



Myth: E-mails between former Registrar Mike Rankin, BMV staff and legal staff prove that Henry Guzmán delayed the implementation of the power of attorney process.

"Documents obtained by The Dispatch show that then-BMV Registrar Mike Rankin regularly pushed Guzman and his staff to put the stricter policy into effect.

The director has not lifted his moratorium; however, it's time to move forward as our review does not indicate any significant or compelling business impacts that would justify any delay," Rankin wrote on Jan. 6.

Rankin followed up on June 26: "Henry (Guzman) needs to move on this issue ASAP – no more delays. We have other out-of-state PDs (police departments) reporting in as well on this issue."

– Columbus Dispatch, Sept. 13, 2009

Fact: False. These statements were pulled from e-mails written by Mike Rankin, but the suggestion that Director Guzmán improperly delayed implementation of the policy is not supported by the records. Instead, the records reflect that Director Guzmán was often waiting for a revised policy from the BMV and was not even copied on many of the e-mails discussing timelines or where the policy stood. The impression created by the Dispatch article is a result of selective reporting of the facts. For example, the article quotes a June 26, 2009 e-mail Registrar Rankin sent to Chief Legal Counsel and the Assistant Director that "Henry [Director Guzmán] needs to move on this ASAP." However, the article does not mention that Director Guzmán signed off on the policy that same day.

Other Examples:

- o A Sept. 2, 2008 e-mail from registrar Rankin indicates that the policy was not put on hold for any improper purpose, but rather "to allow the public, those business interests impacted by the law, and others to better understand the law."
- o A Nov. 3, 2008 e-mail from Registrar Rankin indicates that revisions to the policy are one of many issues facing the BMV, and that BMV staff is "developing plan of action(s)."
- o A Nov. 13, 2008 e-mail from Registrar Rankin notes that Director Guzmán "wants an update on this, presumably today."
- o A Jan. 14, 2009 e-mail from Registrar Rankin states that "The Director needs a recap on plan to deal with the runners and on taking this forward."
- o An April 2, 2009 e-mail from Registrar Rankin notes that "the budget has absorbed much of our time and resources" and that Legal staff must review changes to the registration forms.
- o An April 21, 2009 e-mail from the Department's Chief Legal Counsel to the Registrar asked if the new forms were ready for review.
- o On May 5, 2009 the revised forms were circulated for review.
- o On June 4, 2009, the revised forms were sent to the Director.

Myth: More than 60,000 Ohio vehicle registrations do not have a Social Security number attached to them, raising the possibility that they are fraudulent.

"BMV officials cannot estimate how many are registered to illegal immigrants. Sources within the BMV suggest they account for most of that number." – Columbus Dispatch, Sept. 13, 2009

Fact: False. The BMV believes that even one unlawfully registered vehicle is one too many. That is why the BMV adopted the revised forms and verification procedures. That being said, there is no reason to believe that 60,000 to 65,000 Ohio-registered vehicles are tied to undocumented individuals. The BMV believes that suggestion came from meeting notes reviewing the subject where someone from the BMV suggested there were approximately 60,000 vehicle registration applications that did not have SSNs attached to them.

Myths vs. Facts: Vehicle Registration Power of Attorney Policy



These could be incomplete SSNs, SSNs that a clerk typed wrong, someone completing a vehicle registration for an elderly parent who did not have their SSN and the clerk processed anyway, etc. There is nothing that suggests that these vehicle registrations are all tied to undocumented individuals and should not be used as an accurate representation of those facts.

In addition, while 60,000 sounds like an exorbitant number of vehicle registrations that do not contain SSNs or other identifiers, it's important to put it in perspective with the fact that there are more than 12 million vehicles registered in the state of Ohio; 60,000 is less than 1 percent of that number. In addition, vehicle registrations must be completed yearly or every two years. With few exceptions, the new verification procedure will bring this number down to zero.