

States consider bans on serving food with artificial trans fats

Texas is one of 20 states that have considered proposals to ban the serving of artificial trans fats in restaurants, although the state has yet to enact such a ban. Those who support bans on serving trans fats point to the adverse effects of trans fats on cardiovascular health, while those opposing the bans say they would intrude into individual choices and burden restaurants.

HB 1523 by Alvarado and SB 204 by Shapleigh, both considered during the regular session of the 81st Texas Legislature in 2009 but not enacted, would have banned serving foods that contain artificial trans fats in certain Texas food service establishments. SB 204 was passed by the Senate, and both bills were placed on the House calendar but not considered.

California became the first state to ban serving foods with artificial trans fats in restaurants, effective January 1 of this year. At least six cities — including New York City, Philadelphia, and Boston — and seven counties in three states have implemented such bans. At least 53 million Americans live in areas with bans on serving trans fats in restaurants.

While the most lively debates about trans fat bans concern those that target restaurants, states also have considered, and in some cases implemented, proposals to reduce trans fats in schools

or to commission studies for recommendations on trans fat bans.

What are artificial trans fats?

Artificial trans fats, short for trans-isomer fatty acids, are most commonly created by adding hydrogen to a vegetable oil in a process called partial hydrogenation. This process creates unsaturated trans fat, which is more solid than vegetable oil at room temperature and has a longer shelf life. Some trans fats occur naturally in trace

amounts in meat and dairy products, but these fats are chemically different from artificial trans fats.

History of artificial trans fats

Scientists discovered the partial hydrogenation process for creating artificial trans fats in the early 20th century. Since then, artificial trans fats have been used to deep-fry restaurant foods and as a substitution for saturated fats in certain margarines and shortenings.

(See [Trans fats](#), page 2)

DPS continues new driver's license rules for foreign nationals

The Texas Department of Public Safety (DPS) will continue to require foreign nationals to prove they are lawfully present in the United States in order to renew a driver's license or identification card. In December, the Third Court of Appeals in Austin denied a request for an injunction to prevent DPS from implementing new rules that established this and other requirements for foreign nationals to receive driver's licenses. The Court of Appeals ruled that the trial court had abused its discretion in issuing the initial injunction against DPS. The Mexican-American Legal Defense and Education Fund (MALDEF), which sought the injunction, has requested a rehearing.

DPS rules for driver's licenses

In October 2008, DPS began requiring foreign nationals to provide evidence of their lawful presence in the United States before DPS would

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Trans fats, from page 1

Restaurateurs found that trans fats remained good longer than other vegetable frying oils. Bakers found that the semi-solid state of trans fats allowed them to be substituted for the saturated fats typically used in baking, such as butter or lard. Until recently, this substitution was thought to be advantageous not only because trans fats were often cheaper than saturated animal fats, but also because saturated fats previously were thought to be the least healthy form of fat.

Since the early 1990s, trans fats increasingly have come under the microscope of nutrition scientists due to concerns about potential adverse health effects, such as altering cholesterol levels, that could increase the risk of cardiovascular and other diseases relative to the risks of other fats. In 1999, the U.S. Food and Drug Administration (FDA) acknowledged that the potential health effects of trans fats merited the disclosure of their content in foods to consumers. On January 1, 2006, the FDA began requiring food manufacturers to include the amount of trans fat on food Nutrition Facts panels.

Since 2003, notable lawsuits have been filed against Kraft Foods for the trans fat levels in Oreo cookies and against McDonald's, Burger King, and KFC for their food's general trans fat content. In recent years, dozens of food manufacturers and fast-food restaurants have transitioned voluntarily to trans fat-free food production, likely hastened by seeing competitors face lawsuits and more governments consider trans fat bans.

Proposals considered by Texas Legislature

During the last two legislative sessions, Texas lawmakers have introduced several bills that would have affected the serving of artificial trans fats in Texas schools and restaurants. None of those bills has been enacted, but HB 3560 by Swinford, enacted by the 80th Legislature in 2007, allows state agencies purchasing food for public cafeterias to give preference to contractors providing foods of higher nutritional value and without trans fats.

Food service establishments. During the 2009 regular session of the 81st Legislature, SB 204 by Shapleigh and HB 1523 by Alvarado would have banned serving foods with trans fats in certain Texas food service establishments. SB 204 passed the Senate by a vote of 23 to 7. Both SB 204 and HB 1523 were placed on the House General State Calendar but were not considered.

Texas lawmakers have introduced several bills that would have affected the serving of artificial trans fats in Texas schools and restaurants. None of those bills has been enacted.

These bills would have applied to businesses that sold or served individual portions of food directly to consumers, although it would not have applied to nonprofits, volunteer fire departments, shelters, private home kitchens, private catering, or gasoline retailers.

SB 204 also would have exempted grocery stores from the ban.

SB 204 and HB 1523 would have had staggered implementation dates. As of September 1, 2010, chains and franchises of food service establishments that operated at 15 or more Texas locations could not have packaged, stored, or used a trans fat to prepare or serve food. Baked goods would have been exempt from this ban.

As of September 1, 2011, no food service establishment could have prepared, packaged, stored, or served a food that contained trans fat. The only exceptions would have been to allow the sale of foods served in their original packaging that contained less than 0.5 grams of trans fat per serving or the sale of foods that an establishment had received under a contract with a food manufacturer that did not expire until after August 31, 2011.

Food service establishments would have been required to maintain the original federally required food label for any food or food additive that contained fat and make these food labels available for inspection by the Texas Department of State Health Services.

Schools. SB 862 by Shapleigh and HB 1954 by Farias, introduced in the regular session in 2007, would have prohibited school districts from serving foods

that contained artificial trans fats or that were prepared using another food that contained artificial trans fat. A similar bill, SB 352 by Shapleigh, was introduced in 2009. SB 352 also would have prohibited districts from serving foods containing artificial trans fats, but would have made an exception for artificial trans fats occurring in trace amounts or in foods provided to a district by certain federal agencies. These bills were referred to committee but never heard.

State action on trans fats

Health concerns about trans fats have led to a flurry of legislation in recent years to ban trans fats in various settings. Proposals are not limited to restaurants and other retail food service establishments but include potential bans on serving trans fats in schools and studies on the implications of trans fat bans. Since naturally occurring trans fats have not been associated with the same adverse health effects as artificial trans fats, state legislation restricting trans fats generally refers to those that are artificially created.

Food service establishments. In July 2008, California became the first and thus far the only state to approve plans to eliminate the serving of foods with trans fats by food service establishments. The ban was generally effective on January 1, 2010, and the ban for baked goods will be effective next year. The California ban will apply to establishments that store, prepare, serve, or vend retail foods, including restaurants, health care facilities, or mobile food units. The definition of food service establishment to which trans fat ban proposals in other states would apply varies widely by state.

According to the National Conference of State Legislatures, 20 states, Texas among them, along with the District of Columbia, have considered bans in the last few years on trans fats in food service establishments. All of these bans would have banned certain restaurants from serving foods that contain more than a minimal amount of artificial trans fat. Some

proposed bans would apply only to restaurants operating a chain with a certain number of locations. For example, a proposed ban in Michigan would have prohibited only those with 20 or more Michigan locations from preparing or distributing foods with artificial trans fats. The Ohio ban would have included not only restaurants but catering services, food delivery services, and other “food service operations” providing food to be served in individual portions.

Proposals vary in whether or not the ban would apply to baked goods, foods sold in the manufacturer’s original, sealed package, or foods with less than 0.5 grams of trans fats. The Rhode Island House has adopted a resolution for an incentive program to encourage retail food establishments to eliminate artificial trans fats voluntarily.

Many proposals would have imposed a specific civil penalty for failure to comply with limitations on artificial trans fats. For example, the District of Columbia would have imposed a fine of up to \$1,500 for each offense. Other states would have incorporated their trans fat ban statutes under existing health regulatory codes so that existing enforcement mechanisms would have applied.

Several states also have considered trans fat bans in conjunction with requiring posted warnings about trans fats at restaurants or requiring more detailed information for consumers about nutrition content, including fat content (see *Menu labeling*, pages 4-5).

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Schools. Twenty states have considered bans or limits on trans fats in public schools. Five states — California, Indiana, New Jersey, North Carolina, and Oregon — have enacted such bans. Like the bans in food service establishments, the proposals affecting trans fats in schools vary widely.

California enacted one of the more comprehensive limitations on trans fats in schools. As of July 1, 2009, all California schools had to eliminate all sources of trans fats in foods served in school cafeterias and

vending machines. Schools failing to comply with the ban will not receive certain state funds for meals for the free and reduced-price meal programs, which provide low- or no-cost meals to low-income students.

Indiana adopted a structured approach to limiting trans fat in schools. At least 50 percent of foods sold in schools must be “better food choices” that meet specific nutritional guidelines, including not more than 10 percent of their calories being derived from saturated and trans fat. New Jersey and North Carolina established less prescriptive standards for schools to gradually “reduce” the amount of trans fats in school foods. Oregon’s approach limits the trans fat content only in “snack” food provided at schools.

Studies. Georgia, Hawaii, Louisiana, New Mexico and Vermont have adopted proposals to study issues related to trans fats and their health effects. These studies are supposed to explore issues such as the feasibility and implications of artificial trans fat bans in public schools and in food service establishments, alternatives to the use of trans fats, and ways to inform consumers about trans fat content in foods.

Debating trans fat bans

Proposals to ban trans fats in food service establishments sparked serious debate during the regular session of the 81st Texas Legislature in 2009. The Texas debate echoed that occurring within many other state and local governments. Arguments tend to focus on balancing public health concerns with risks of government overstepping its boundaries in dictating citizens’ eating habits.

Supporters of bans on serving foods with artificial trans fats in food service establishments say that such bans would enhance the health of Texans by prohibiting restaurants and other food service establishments from selling most foods with artificial trans fats. Trans fats lower “good” cholesterol and raise “bad” cholesterol, leading to clogged arteries, insulin resistance, and serious health conditions such as heart disease, stroke, and type 2 diabetes. These conditions often are debilitating or deadly.

Cardiovascular disease, including high blood pressure, coronary heart disease, and stroke, is the

Menu-labeling legislation considered

In 2008, New York City became the first city in the nation to require chain restaurants to post calorie content on menus and to make other nutrition information available to consumers. Similar requirements are included in the House and Senate versions of the national health care reform proposals and in other introduced federal legislation. California, Maine, Massachusetts, Oregon, and New Jersey have enacted menu-labeling laws, according to the National Conference of State Legislatures, and California’s requirements will be the first to take effect on January 1, 2011.

Texas is one of several states that have considered, but not enacted, menu-labeling laws. During the regular session of the 81st Legislature in 2009, HB 1845 by Lucio and HB 1522 by Alvarado included requirements for chain restaurants operating at 20 or more Texas locations to post calorie content on menus, on menu boards or other signs visible before food is purchased, and on tags in a display case if food was displayed there. The bills would have required other nutrition information, such as fat, cholesterol, sodium, and sugar content, to be available upon request. Both bills were referred to the House Public Health Committee, but neither was voted out of committee. (*continued, bottom of p. 5*)

number one killer of Americans, claiming 831,272 lives in the United States in 2006, according to the American Heart Association. That year, cardiovascular disease was responsible for 34.3 percent of all U.S. deaths. The FDA has acknowledged since 1999 that consuming trans fats increases the risk of coronary heart disease due to its influence on blood cholesterol. A frequently cited review of data from experiments on trans fat health effects suggests that if trans fats were eliminated completely from diets in the United States, between 72,000 and 228,000 coronary heart disease events could be avoided each year, a 6 to 19 percent reduction.

A trans fat ban not only would improve quality of life by reducing the incidence of serious health problems associated with trans fats, but it also could save Texans money. Both consumers and the state pay for health services that could have been avoided by diets that did not include artificial trans fats. The American Heart Association estimates the 2010 direct and indirect costs of cardiovascular disease and stroke will be \$503.2 billion. Better health outcomes from eliminating consumption of trans fats could avoid many of these costs in future years.

Evidence suggests that trans fats are harmful, and no evidence suggests they are healthful. Because acceptable substitutes for trans fats are available at reasonable prices that will not affect the taste of food, these substitutions should be made. The most recent evidence suggests that even if some trans fats were replaced with saturated fats such as lards, the substitution still would be preferable to consumption of artificial trans fats.

In enacting a trans fat ban for food service establishments, Texas would join California, as well as major cities such as New York, Philadelphia, and Boston, in providing citizens with healthier food options. Restaurant chains and major food manufacturers already are shifting to trans fat-free foods because they are responding to what consumers want. A ban could be phased in, providing appropriate time for businesses to make any necessary changes, such as finding an alternative cooking oil.

Banning trans fats would have more far-reaching health benefits by raising awareness of a public health issue that could be used as a platform to discuss other healthy lifestyle changes. Although substituting trans fat with an alternative fat would not directly decrease rates

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Health advocates say menu-labeling requirements give consumers information needed to make wiser nutrition choices. Without labels, consumers cannot tell by looking at a menu that some meals contain more than the recommended calorie intake for an entire day. While many restaurants put nutrition information online, this is little help in making decisions at restaurants. Studies have shown that when nutrition information is immediately available, many consumers will order more healthful foods, or they will consume fewer calories later if they choose a higher-calorie menu item. Advocates say many of the menu changes restaurants are making, including providing healthier items and reducing calories in existing items, is in response to customer demand in case menu labeling becomes required in their areas.

Opponents of menu-labeling requirements say restaurant chains should not have to bear the expense of analyzing the nutrition of each menu item and clutter their menus with nutrition data. Many restaurants pride themselves on making meals customizable, which can make reporting nutrition information in a simple way impossible. Many restaurants have responded to consumer wishes by making information available in pamphlets and online. Consumers have freedom to choose where to dine, and those worried about nutrition should dine where they are comfortable with the information available. If menu-labeling laws are enacted, opponents say, it should be done at the federal level to avoid a patchwork of state and local regulations that would cause confusion and expense to restaurants.

of obesity in Texas since all fats have the same caloric content, related public education campaigns and media attention would be an ideal opportunity to promote other healthy lifestyle habits that encourage people to lose weight, for example.

Opponents of bans on serving foods with artificial trans fats in food service establishments say that such a ban would be a government intrusion into Texans' right to choose what they eat and Texas businesses' right to choose the foods they serve. It is a matter of personal choice and responsibility for informed consumers to determine what they will eat, including what health risks they are willing to assume. If it were the will of consumers to stop eating trans fats, then the market would stop producing them. In fact, current market trends demonstrate declines in the amount of artificial trans fats being produced. This trend should be allowed to run its course until a natural equilibrium is established between consumer demand for trans fats and market supply.

An artificial trans fat ban in restaurants would create a variety of challenges for businesses. Many businesses would need to change food distributors or switch cooking oils. Some of these businesses could face losses if they relied on a customer base that expected continuity in the taste of the foods they purchased. Contracting costs could increase for businesses having to switch food distributors. Trans fats have been an attractive, less costly alternative to saturated fats for making baked goods. Bakers should not lose this alternative because the relative difference in health outcomes between saturated fats and trans fats is not well proven. In general, the level of health threat posed by artificial trans fats does not merit a reaction so extreme as to place burdens on Texas businesses, large and small, during tough economic times.

While it is clear that trans fats have some adverse health effects, supporters of trans fat bans focus too heavily on results of studies that may exaggerate the number of people who could avoid coronary heart disease each year if trans fats were eliminated. Such high estimates unrealistically assume that if trans fats were banned, they would be replaced by healthier, unsaturated fats or other healthier alternatives, while realistically, many bakers would return to using

saturated fats to maintain product quality. These studies also may inflate the estimated number of heart disease events that could be avoided solely by eliminating trans fats because the studies likely do not control for all the risk factors for heart disease.

Rather than interfere with consumer freedoms and the functioning of Texas businesses, the state should allow consumers to make educated choices and let businesses adapt to consumer needs. Government has a role in curbing communicable diseases, but people have more control over avoiding chronic, long-term diseases based on the personal health and nutrition decisions they make.

Other opponents of bans on serving foods with artificial trans fats in food service establishments say the current emphasis on trans fats may cause more problems than it solves. People may have the false impression that a trans fat ban will make their foods healthy enough that they do not need to pursue other aspects of a healthy lifestyle. If a trans fat ban is implemented, it should be in conjunction with other policy changes to create ongoing public focus on healthy behaviors, such as quitting smoking and losing weight.

For example, menu-labeling legislation ([see pages 4-5](#)) and taxes on junk foods would help consumers have a better understanding on an ongoing basis of the risks of eating certain foods. These policy changes also would have a bigger impact on curbing the obesity epidemic in Texas. Almost 28 percent of Texas adults are obese, and that figure could climb to more than 42 percent by 2040, according to the state demographer. Obesity-related health conditions not only can be deadly or diminish quality of life but also cost the state billions each year in medical expenses and lost productivity.

— by *Carisa Magee*

Driver's licenses, from page 1

issue a renewal or duplicate license or ID card. This differs from requirements for U.S. citizens, who once they have established their citizenship to obtain a driver's license or ID card, need only prove their identity and are not required to prove citizenship again in order to renew a license. Before the new DPS rules, foreign nationals also needed to prove lawful presence in the United States only when first applying for a driver's license and were not required to prove lawful presence to obtain a renewal.

Since 2006, applicants without an initial lawful admission period of at least one year have not been issued a license or ID card. Under rules enacted in 2008, those without at least six months of lawful presence remaining may not receive a license or ID card. Those with open-ended permits to be in the United States must renew their licenses yearly. While the license includes the date of expiration of the license holder's authorized presence, the license does not automatically expire on that date. Current law requires driver's licenses to expire after six years. DPS does not have the authority under current law to require that licenses expire simultaneously with their visas.

The driver's licenses for foreign nationals also are stamped "TEMPORARY VISITOR" and display the date on which the license holder's authorized presence in the United States expires, which usually is the visa expiration date. The licenses issued to foreign nationals are vertical, like those issued to minors, rather than the more

common horizontal layout. DPS issues around 400 of these cards to foreign nationals each day and had issued just under 115,000 such cards between October 2008, when the new regulations took effect, and the end of January 2010.

In seeking an injunction against the new DPS rules, MALDEF had contended that DPS did not have the rulemaking authority to establish the requirements without explicit statutory authority from the Legislature. MALDEF has requested a rehearing on the injunction denied by the Austin Court of Appeals in December.

In addition, the Texas Civil Rights Project has brought a suit against DPS in federal court that alleges the rules violate the Equal Protection Clause of the U.S. Constitution. The suit claims the new rules cause foreign nationals who are legally present in the United States to face additional unnecessary burdens that other applicants do not face. Initial hearings in that case took place in October 2009.

DPS instituted the new driver's license requirements for foreign nationals in response to security holes exposed by the attacks of September 11, 2001, and an incident in 2006 in which a Dallas man helped foreign nationals obtain Texas driver's licenses after their visas had expired. The new DPS rules would move Texas toward full compliance with the federal REAL ID Act, which was enacted in the wake of the 9/11 attacks and mandates that states follow certain requirements in issuing identification cards (*see page 9*). The REAL ID Act requires



Pictured above is a sample of the vertical licenses being issued to foreign nationals who can prove their lawful presence in the United States. The date the license holder's lawful presence expires is printed on the front of the card, as is the phrase "temporary visitor." Source for graphic: Texas Department of Public Safety.

that states not issue driver's licenses to foreign nationals whose visas have expired and that state-issued identification expire when a foreign national's lawful presence has ended. DPS estimates these changes to its driver's license program could affect up to 2 million Texas residents.

DPS has said foreign nationals still are eligible for driver's licenses but will have to prove they are lawfully present in the United States. Often this is done by showing a valid U.S. visa. According to some estimates, foreign nationals who overstay their visas account for more than half of the illegal immigrants present in the United States. Under

the changes made by DPS, foreign nationals unable to prove lawful presence will not be reported to federal authorities, but DPS will deny them a license. The program does not prevent foreign nationals who can prove they are lawfully present from acquiring a driver's license unless their authorization to be present in the United States is valid for less than 12 months or if they have less than six months remaining on their authorized stay.

Past legislative efforts

During the regular session of the 81st Legislature in 2009, several bills would have formalized or, in some cases, expanded on the changes DPS made in issuing driver's licenses to foreign nationals or would have removed DPS authority to make these changes. SB 1784 by Carona was among the bills that would have codified the authority of DPS to require that foreign nationals prove lawful presence as a condition for renewal, while HB 1278 by McClendon was among the bills that would have curtailed DPS's authority by prohibiting DPS from requiring proof of lawful presence to renew a license.

SB 1784 would have required an applicant for a driver's license to provide proof of either citizenship or lawful presence in the United States in order to obtain or renew a license. The bill also would have required that a foreign national's driver's license automatically expire at the end of the applicant's authorized stay in the United States. This would have tied the validity of a license to the length of a person's visa term. SB 1784 was reported favorably by the Senate Transportation and Homeland Security Committee but was not considered on the Senate floor.

HB 1278 would have allowed DPS to require proof of identity and residency but not lawful presence. Acceptable proof of identity and residency would have included certain documents issued by federal, state, and local governments, including courts and schools; Canadian-issued identification; foreign passports accompanied by U.S. visas; and certain tax and credit

statements. HB 1278 would have prohibited DPS from requiring a foreign national to present a visa. HB 1278 was reported favorably by the Public Safety Committee and died in the Calendars Committee.

Debate on new DPS rules

Supporters of the new DPS rules for issuing driver's licenses to foreign nationals say the rules will improve national security. One of the recommendations of the 9/11 Commission was that state driver's licenses not be issued to foreign nationals who are not legally in the United States. The new licenses, by requiring proof of lawful presence, will help to prevent those not authorized to be in the country from obtaining valid identification. With state-issued identification, terrorists can move more freely throughout the country and buy goods and services that they otherwise would be denied. The 9/11 Commission found that valid identification can

be as important to a terrorist as weapons. DPS's changes will help prevent terrorists from carrying out future attacks in the United States.

Texas already requires initial applicants for driver's licenses to prove they are in the United States legally. Requiring foreign nationals applying for renewal to provide proof of continued lawful

presence will make the policy more consistent. Only five states do not require proof of lawful presence for either an original or renewal license: Hawaii, Maryland, New Mexico, Utah, and Washington. Texas law grants DPS wide latitude in how it administers driver's licenses and identification cards in order to promote public safety. The new rules are reasonable changes that will enhance the integrity of Texas' licensing system. Any burdens placed on foreign nationals are more than justified by the increased integrity of the licensing system.

By requiring that foreign nationals be present in the United States for at least one year in order to receive or renew a driver's license, DPS will be better able to ensure that those with licenses have a well established and documented lawful presence in the country. Those

Several bills would have formalized or expanded on the changes DPS made in issuing driver's licenses to foreign nationals or would have removed DPS authority to make these changes.

Federal REAL ID requirements

The U.S. Department of Homeland Security recently granted a blanket extension until May 10, 2011, to all states and territories to fully comply with the requirements of the federal REAL ID Act of 2005. The REAL ID Act was enacted by Congress in response to the 9/11 Commission's recommendation that more secure sources of identification were needed for accessing vulnerable areas, such as airports and airplanes. The primary focus of the act is making it more difficult to obtain fraudulent identification documents. As of December 31, 2009, only Indiana and Florida had met all the required benchmarks to show advancement toward implementing the enhanced security requirements of the REAL ID Act. Almost all of the 56 states and territories of the United States that were to have met 18 compliance benchmarks had requested extensions.

The 18 benchmarks include: retaining a picture of every applicant for a state-issued identification card, not just recipients; verifying each applicant's Social Security number and lawful presence in the United States; and including certain security features in the design of the card that would make it difficult to forge or duplicate. Texas is in compliance with most of these standards but does not meet the REAL ID requirement that state-issued identification automatically expire along with a person's lawful presence in the United States, a change that DPS has indicated it does not have the statutory authority to implement.

REAL ID remains controversial. As of December 31, 2009, at least 24 states had enacted some kind of anti-REAL ID measure either through a statute or through a concurrent or joint resolution. Texas is among 26 states that have not enacted laws opposing REAL ID. In 2009, the Texas Legislature did not fund DPS's request for \$78 million to implement REAL ID, which would have been used for software programming and advanced materials for identification cards. Some states support REAL ID and have enacted laws to move their states into greater compliance, including Florida, Indiana, Maryland, Michigan, Nevada, Ohio, Tennessee, Utah, and Wisconsin.

The National Governors Association and Secretary of Homeland Security Janet Napolitano both have lobbied Congress to approve a modified form of REAL ID called PASS ID. PASS ID still would require national standards for identification documents to make them more secure than the existing patchwork of state regulations but would grant more federal funding to states to help implement the required changes. In order to address privacy concerns that have been raised about REAL ID, PASS ID would eliminate demands for new national databases that would allow all states to store and cross-check identifying information, which some say would make state driver's licenses akin to a national ID card. PASS ID also would eliminate a requirement that motor vehicle departments verify birth certificates with originating agencies.

In July 2009, S. 1261 by Akaka (D-Hawaii), which contained the provisions of PASS ID, was approved by the Senate Homeland Security and Government Affairs Committee. The full Senate has not scheduled a vote on the measure.

with visas that are valid for at least 12 months have gone through a more rigorous visa application process. In addition, DPS simply does not have the administrative resources to renew a foreign national's driver's license multiple times a year if that person's visa information is frequently changing.

The new vertical layout of the identification cards will help to lessen racial profiling. Vertical licenses will declare openly that a person is a foreign national, while horizontal licenses might invite law enforcement to inquire into a person's lawful presence based on their appearance alone.

Requiring proof of lawful presence in the United States also will deter future illegal immigration. If it is more difficult for people to enter the workforce and society illegally, fewer may try.

Opponents of the new DPS regulations say the requirement that foreign nationals provide proof that they are in the United States legally every time they renew their licenses will hamper lawful immigrants' ability to integrate and become productive and responsible members of society. People who are denied a license to drive face economic hurdles, including difficulty accessing certain financial services.

The requirement that a visa be valid initially for at least a year — and valid for at least six months after a license is issued — discriminates against some of those who are in the country legally. Some visas, such as H-2B work visas and certain agricultural-worker visas, often are valid for less than a year. Under DPS's new rules, these foreign nationals, who are legally present in the United States, will be denied driver's licenses because their visas are not initially valid for a year or more. DPS should not treat such people differently when they otherwise would qualify for a license.

DPS's rule changes also will force foreign nationals who can legally prove their presence in the United States to face extra fees that other applicants for a license will not. DPS's requirement that a license display a visa's expiration date will force a foreign national to apply for a new license every time that person's visa information changes. Also, those with open-ended permits will have to renew their licenses annually. This could lead to a large increase in fees paid compared to what other license applicants pay over time.

Public safety will be better served if those who have obtained driver's licenses legally are able to retain those licenses regardless of their lawful presence in the United States because then they could be held responsible for their driving records and be able to purchase liability insurance, rather than being forced into the shadows. If they are to continue providing for their families and contributing to the Texas economy, they will need a state-issued driver's license in order to drive to work and to buy goods and services that require showing identification. Once they have obtained driver's licenses from the state of Texas, they should be treated the same as other Texas residents. Foreign nationals will continue flocking to the United States in search of a better life, regardless of the requirements DPS puts on issuing driver's licenses.

DPS does not have sufficient rulemaking authority to require proof of lawful presence to renew a license. In addition, the program inappropriately will shift responsibility to enforce immigration law from national authorities to state and local law enforcement officers. State and local officials are not adequately trained to handle immigration issues, and their time and efforts would be better spent on other priorities. Immigration is a federal issue, and DPS's rules will transgress inappropriately on the federal government's responsibilities.

— *by Tom Howe*

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