

March 26,2020
The Honorable Ralph Northam
Governor, Commonwealth of Virginia
1111 East Broad Street
Richmond, VA 23219

RE: Virginia Driver's Licenses for All Virginians, regardless of Immigration Status

Dear Governor Northam:



701 E. Franklin Street
Suite 1412
Richmond VA 23219
(804) 644-8022
acluva.org

Claire G. Gastañaga
Executive Director

I write to you today on behalf of the ACLU of Virginia (ACLU-VA) and its more than 100,000 Virginia-based donors, members and supporters from across the Commonwealth, and for ACLU PeoplePower Fairfax, regarding Senate Bill 34 and House Bill 1211, which, as passed by the House and Senate, would grant driver's privilege cards – but not access to existing state (not REAL-ID) licenses – to any Virginia resident regardless of their immigration status. The ACLU of Virginia strongly opposes driver's privilege cards and urges you to propose amendments to Senate Bill 34 and HB 1211 that will enable and require all Virginia residents to obtain standard Virginia driver's licenses regardless of status.

Requiring and enabling every resident of Virginia to obtain a Virginia state driver's license is essential to public safety. Having everyone who drives licensed and insured will make Virginia's roads safer for everyone. Particularly in many parts of the Commonwealth where public transit is not a viable alternative, people must be able to drive to get to work, bring children to and from school, and get to medical appointments. Even where public transit is an option, this is especially important during the current health crisis and the heightened risk of serious harm from COVID-19 exposure to people out in public. To keep us all safe in this current health crisis, it is vital that Virginia have sensible, equitable policies that would allow individuals to drive safely to help maintain physical distance and to have access to medical care and other life necessities.

As passed by the House and Senate, SB34 and HB1211, create a whole new mechanism to authorize or license driving for some residents of Virginia in the form of what are called "driver's privilege cards." The fact is that creating this new class of authority for drivers imposes unnecessary and discriminatory barriers to licensed driving that do nothing to keep us safe, either on the roads or otherwise.

As you know, Virginia REAL-ID licenses are not available to people who are in the country without authority, and it is these licenses (or a valid US passport) that will be required to board a plane or enter a federal building after October 2020. This reality directly addresses longstanding expressed concerns about

Virginia driver's licenses being used by 9/11 terrorists (even though those concerns fail to reflect the reality that those licenses were issued only to people lawfully present). Our new REAL-ID reality means that our existing non-REAL-ID Virginia licenses will not privilege people to board planes or enter federal buildings. That distinction affords Virginia the opportunity to make us all safer on our roads by enabling and requiring every person who lives in Virginia and wants to drive to become a licensed and insured driver regardless of their status.

The creation of a new class of driving authority is bad public policy and imposes unnecessary administrative burdens on the motor vehicle licensing system at a time when REAL-ID compliance already is stressing the system. Moreover, creating this new class of authorized drivers is an invitation to discrimination by law enforcement and insurance companies among others, in part because of the unduly porous nature of current "protections" in place under federal and state law to guard the privacy of people's information gathered and stored in the Department of Motor Vehicles data base.



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Add to that the lack of a rational basis for the requirement that people seeking driver's privilege cards, and only those seeking driver's privilege cards, will be required to show that they have paid Virginia taxes to acquire the cards, a required showing that is discriminatory on its face, imposes new and unnecessary burdens on the tax department (at a time of great revenue uncertainty and stress) and on the DMV. This requirement potentially compromises people's privacy without any corresponding benefit to the public in terms of enhanced safety, on the roads or otherwise. The effect of this targeted tax requirement is to make DMV a de facto tax collector at precisely the time when the trend is away from using driver's licenses as enforcement tools for requirements that have nothing to do with the safety of our roads.

Enabling and requiring all Virginia residents who want to drive to obtain Virginia driver's licenses is good for public safety, good for other drivers, and reduces the administrative burdens on both DMV and the tax department. Offering all people living in Virginia a meaningful and non-discriminatory way to drive legally will help keep families together by reducing the number of people ticketed and arrested for driving without a license. Offering driver's licenses to all Virginia residents could affect positively more than 310,000 people, and, according to the Commonwealth Institute for Fiscal Analysis, could bring the state as much as \$17.7 million in revenue from standard licensing fees and revenue from more cars being properly titled and registered in Virginia over the next two years.

Finally, and importantly, we ask you to consider carefully the context in which this decision is being made. The current federal administration is aggressively pursuing an anti-immigration agenda and has shown that it will use every tool available, humane or not, in seeking to target and remove even legal immigrants from our country. It is vital that Virginia act affirmatively to offer immigrant drivers the opportunity to obtain driver's licenses like everyone else, reducing the risk of discrimination and wholesale exposure inherent in

driver's privilege cards, and encouraging all drivers to be licensed, thereby, increasing public safety and reducing the risk that a routine traffic stop can result in arrest, detention, or even deportation. Families deserve to stay together and everyone deserves safe roads.

Thank you for your attention to this important matter, and if you have questions or need more information please do not hesitate to contact Ashna Khanna, ACLU of Virginia legislative director, either by calling (248) 231-2551 or emailing akhanna@acluva.org.

Very truly yours,



Claire Guthrie Gastañaga
Executive Director



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P.S. If you choose not to protect public safety by recommending amendments that would extend standard driver's licenses to all Virginia residents, at a minimum, we urge you to recommend that SB34 and HB1211 be amended to address the following four concerns:

- The legislation does not limit access to the DMV data base in a way that would prevent federal immigration authorities from obtaining a list of all persons who applied for or received a driver's privilege card. Recommendation: amend legislation to protect information from disclosure or direct DMV to put in place rules that protect such information from disclosure before the bill becomes effective on January 1, 2021.
- The legislation imposes a discriminatory requirement in asking only a certain class of individuals to present tax returns and an Individual Taxpayer Identification Number (ITIN), when no other Virginia resident is asked to provide that information when applying for a driver's license. Recommendation: amend the legislation to delete requirement that tax information be provided by people seeking driving authority. HB1211 as enrolled (identical changes needed in SB34): on line 1680 after "applicant" delete remainder of line 1680, all of line 1681, and all of line 1682 through "months" and insert "is a resident of Virginia". Also, delete all of lines 1977-2168.
- The legislation creates a classist, two-tiered system where some Virginia residents are asked to pay significantly more to be authorized to drive - \$50 for a two year for a drivers privilege card - when regular drivers licenses only cost Virginia residents \$4 per year or a minimum fee of \$20. Recommendation: amend legislation to impose fees that are equal for standard licenses and driver's privilege cards. HB1211 as enrolled (identical changes needed in SB34): On line 1696 delete "\$50" and insert "\$24" and on line 1698 delete "\$50" and insert "\$24"

- The legislation invites discrimination and undermines civil rights by potentially resulting in issuance of driver's privilege cards that are marked in an unreasonably distinguishable way. Recommendation: amend legislation to clarify that all that is required is a letter code on the back of the license where other restrictions on licenses are coded or direct DMV to develop a card that doesn't include distinctions that allow identification on its face of the person holding the card as a person in the US without authority. HB1211 as enrolled (identical changes needed in SB34): On line 1688 after "credential" and delete remainder of line 1688, and all of line 1689; insert ". A restriction shall be printed on the back of the card that indicates it is of limited duration."



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