



The Tennessee Driving Certificate—Background, Pitfalls, and Lessons Learned

I. Introduction

In May of 2004, Tennessee Governor Phil Bredesen signed the Tennessee driving certificate bill into law. This law created a totally new type of driving document, officially entitled a “certificate of driving.” The law, which took effect on May 29, 2004, made driver’s licenses available only to U.S. citizens and lawful permanent residents in Tennessee. All other applicants were eligible only for a “certificate for driving” that on its face bore the notation (in red lettering on a white background): “FOR DRIVING PURPOSES ONLY. NOT VALID FOR IDENTIFICATION.”

The certificate legislation was created by the Administration of Tennessee Governor Phil Bredesen, who claimed the previous law – allowing all immigrants to obtain a driver’s license regardless of immigration status – was a threat to homeland security. The Administration claimed the new certificate balanced the needs for homeland security with those of road safety.

The Tennessee Immigrant and Refugee Rights Coalition (TIRRC) – which originally formed around a successful 2001 campaign to remove the previous social security requirement for Tennessee driver’s licenses – did not support the 2004 driving certificate proposal. The Coalition – and its statewide membership – was concerned that a two-tiered driving document would result in the discrimination of immigrants, as well as a wide variety of additional problems. TIRRC – and its supporters – tried to convince the Administration and the legislature not to change the 2001 law during the 2004 legislative session, but in the end was not able to stop what had become the political version of a runaway train. In fact, undocumented immigrants in Tennessee barely held on to access of any driving document at all, as many in the legislature supported and almost passed a competing bill that would have added a blanket legal presence requirement for any Tennessee driving document.

Since passage of the driving certificate law, over 16,000 Tennessee residents have obtained a driving certificate. Although these numbers may appear to indicate a smooth transition to the certificate, the reality is that implementation has been anything but smooth. What follows is a brief analysis of the decisions made by policy makers that led to many of these problems. This is followed by a discussion of how passage of the REAL ID Act has changed the debate, which is in turn followed by suggestions as to how other states could better design a two-tiered program by learning from the mistakes of Tennessee. It should be stressed that TIRRC is not endorsing a two-tiered approach, but simply attempting to share lessons learned from the unique Tennessee experience. It should also be noted that although the driving certificate legislation was implemented poorly in Tennessee – and that some problems could have been avoided – other problems, such as discrimination against certificate holders, are simply unavoidable given the nature of the document.

II. Bad Decisions (or oversights)

- *Certificate legislation did not address the issue of “citation in lieu of arrest.”*
Result: Certificate holders in Tennessee fear the possibility of being arrested at traffic stops for not demonstrating “appropriate” ID.

Since the Tennessee driving certificate is “not valid for identification,” local law enforcement officers can in theory arrest drivers for minor traffic violations instead of issuing them tickets. This is because when an individual is ticketed, he/she must show valid identification in order to receive a ticket instead – or “in lieu” – of arrest. Tennessee law enforcement agencies have expressed conflicting views about whether the certificate can be used as identification when an individual is cited, with some jurisdictions officially accepting the certificate as identification and others leaving the decision up to individual officers. The policy variation from one town to another, and even one officer to another, has created fear and confusion about whether the certificate will be accepted by law enforcement.

- *Certificate only lasts one year for undocumented*

Result: Many certificate holders in TN are forced to return to the DMV once a year, and lines at the driver’s license testing centers increase.

Forcing undocumented immigrants to renew their certificates every year (instead of once every five years like a normal license) has made it less likely that all certificate holders will obtain/renew certificates, while at the same time causing longer lines at local driver’s license stations.

- *All temporary immigrants excluded from obtaining a normal license*

Result: Understandable backlash from temporary immigrants in TN.

The authors of the driving certificate legislation over time came to realize that undocumented immigrants should not be the only group receiving the certificate. After all, if the certificate were just for the undocumented, then the document would essentially be proof of undocumented status. Therefore, the bill sponsors made the certificate mandatory for all temporary immigrants (i.e. visa holders or in legal jargon “non-immigrants”) as well. In reality, it was not necessary to forbid *all* temporary immigrants from obtaining normal driver’s licenses. This “broad-brush” policy has resulted in a backlash by many temporary immigrants, particularly H1-B visa holders. Indeed, some foreign business executives have decided not to move to Tennessee because they have been afraid of how they would be treated if forced to drive with a certificate.

- *No funding allocated to re-train workers*

Result: Many foreign-born applicants for normal driver’s licenses are incorrectly given certificates.

Tennessee has been facing a revenue crisis for several years now, and as a result no significant funding was allocated in 2004 to re-train Tennessee driver’s license testing center workers in the incredibly diverse and complex array of documentation used to prove different levels of immigration status. Virginia, on the other hand, instituted a driver’s license legal presence requirement in 2003, and allocated over \$5 million dollars the first year alone to ensure proper training and support. As a result of the lack of training in Tennessee, many immigrants and refugees who should have been granted normal licenses have had their licenses taken away, and have walked away with certificates. Although the Coalition has been able to work with driver’s license officials to obtain licenses for those individuals who have come to TIRRC, we are certain there are many others who have been wrongfully rejected and have simply given up.

- *No buy-in from insurance companies obtained*

Result: Many TN certificate holders are unable to obtain auto insurance.

No concerted effort was made by legislators or the Governor's office to get buy-in from auto insurers about the certificate. As a result many insurers were unprepared for the changes. Once companies finally did start making decisions on the certificate holders, some decided they would charge the exorbitant "high risk" rate, and others decided they would not cover certificate holders at all.

- *No anti-discrimination clauses or personnel*

Result: Discrimination against certificate holders not being reported or addressed.

Although it was clear that having a separate driving document for certain foreign-born Tennesseans could lead to discrimination, no clause was written into the legislation to address this possibility. As a result, there is not a reasonable mechanism for an immigrant to legally challenge any discrimination faced as a result of the certificate. In addition, no employees were hired or trained to take in civil rights complaints around the driving certificate.

- *No outreach campaign to the immigrant community*

Result: Many immigrants unclear as to how changes to the Tennessee driver's license law will affect them when their licenses expire, and unaware of their rights in regards to the certificate.

No campaign was undertaken by the state to educate the immigrant community about the new driving certificate law. As a result, TIRRC – with its limited resources – was forced to pick up the slack. TIRRC initiated an ambitious media campaign in the immigrant community explaining what the changes were and how they would affect the community. It also started a toll free information/complaint hotline the day the certificate law came into effect, which has resulted in countless calls. Despite these efforts, a lack of resources has kept TIRRC from reaching many in the immigrant community. Just a small investment in resources by the state government would have made an enormous difference.

- *Certificate not meant to be valid for ID in ANY circumstances*

Result: Certificate holders in Tennessee have trouble obtaining basic necessities because they do not possess a valid ID

Because the driving certificate states "not for identification purposes" on the front, it has been difficult for certificate holders to obtain basic necessities such as rental housing, medical care, education and banking. Utah – the only other state so far to adopt the two-tiered model – has a "driving privilege card" which cannot be used for government institutions, but *can* be used for private institutions.

- *No arrangements made with other states*

Result: Certificate holders afraid to drive outside of Tennessee

No agreements were made with other states to officially recognize the Tennessee certificate. As a result, if a certificate holder has to leave Tennessee for any reason, he/she does not know whether law enforcement in the state he/she is visiting will acknowledge the document

in case of traffic stops. In essence, this decision is left up to the individual officer in that jurisdiction.

III. Positive Actions- Although there were obviously many mistakes/oversights in the development and implementation of the driving certificate, there were also some positive decisions which are recognized below:

- *Certificate not just for undocumented immigrants*
As is mentioned briefly above, this was an important decision that – although imperfect – prevented the certificate from becoming de-facto proof of undocumented status.
- *Certificate does not indicate immigration documentation used in application process*
A significant number of legislators had attempted to add an amendment that would have displayed the documentation used to obtain the certificate directly on the face of the card. This obviously would have deterred undocumented immigrants from obtaining certificates.
- *Certificate does not indicate when the document was issued, only when it expires*
If the certificate had indicated when the document was issued – in addition to the expiration date which *is* listed – an observer could be relatively certain whether or not the certificate holder was documented or undocumented. This is because for undocumented immigrants the certificate only lasts for a year, whereas for documented temporary immigrants, the certificate lasts for as long as the individual’s visa lasts.
- *Law has been “grandfathered” in*
This means that a temporary or undocumented immigrant who currently has a license can keep his/her license until it expires. Nevertheless, upon renewal, the applicant will only be offered a certificate.
- *Refugees, asylees and public interest parolees given access to normal licenses*
During the rulemaking process it was determined that refugees, asylees and public interest parolees intended to be in the country permanently, and therefore qualified for a normal license.

IV. How passage of the REAL ID act changes the debate

The passage of the REAL ID Act by Congress in May of 2005 changed the framework for the debate on two tiered driving documents substantially. This is because federal law now requires states to institute legal presence requirements for driver’s licenses within three years. This legal presence requirement does not apparently extend to “second tier”, “non-federal ID” driving documents. This means that in Tennessee – for example – it will now be almost impossible to go back to the progressive 2001 driver’s license law, but the Tennessee certificate will apparently not be appreciably affected.

Although this new reality makes alternative approaches such as the driving certificate seem more and more like the best option for undocumented immigrants who wish to drive legally, it is important not to rush into policy changes/campaigns. Since REAL ID doesn't need to be implemented for three years, state advocates should avoid moving too quickly and think through the best policy for immigrants. There are a number of other strategies being examined by immigrant advocates across the country, and all strategies should be investigated thoroughly before any firm decisions are made.

V. What states should do differently if they decide to opt for a two-tiered approach

- *Address the issue of “citation in lieu of arrest” in any legislation.*
- *Have certificate last for at least three years.*
- *Allow temporary immigrants with permission to work to obtain regular licenses.*
- *Allocate significant funding to re-train driver’s license workers.*
- *Obtain buy-in from insurance companies beforehand.*
- *Legislate certificate anti-discrimination clauses and hire or train staff to accept civil rights complaints.*
- *Work with state authorities to initiate extensive outreach campaigns to the immigrant community.*
- *Make certificate valid for ID for non-governmental (i.e. private) entities. Or even better, only make the certificate invalid for “federal identification purposes” such as boarding a plane.*
- *Work to get the certificate recognized by other states beforehand.*

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