

Driver Licensing And Identification Card Issuance ACTION/ISSUE STATEMENT

Short Description:

License Status Post Compliance/Pre-Legal Presence Proof

Decision Issue:

What license status should be reflected on the record of an individual whose license has been suspended or revoked, all reinstatement (compliance) requirements have been met, but the applicant has not yet provided proof of legal presence?

Impact and Challenges:

This decision would impact those individuals whose driver's licenses have been suspended or revoked, and all reinstatement requirements have been met (ie. the suspension or revocation period has been served, the reinstatement fee paid, proof of financial responsibility has been filed, etc....), but proof of legal presence has not been provided and recorded on the licensee's driving record yet. If the individual's record continues to reflect a "revoked" or "suspended" status, then if that person is caught driving without a license, the person will be charged with driving suspended or revoked, which is a class 1 misdemeanor. In addition, the court is required, for these offenses, to impose a license suspension for a period equal to the period of license suspension or revocation that was originally imposed. If the person's record, however, is changed to reflect that the person is "not licensed" then, if caught driving, the person could be charged with the lesser offense of driving without a license, which is a class 2 misdemeanor. For those individuals who have left Virginia and are applying for a license in another state, if the individual's Virginia record continues to reflect "revoked" or "suspended" then the licensing state will not issue a license until the individual has cleared their DMV record in Virginia. If the DMV record of the same individual (who has satisfied all reinstatement requirements, but not provided proof of legal presence), reflected a different status, such as "not licensed", then another state would license the individual without requiring any additional action involving the individual's Virginia DMV record.

This decision will also impact the courts and law enforcement, as it will impact the nature of the charge against the licensee that would be brought by law enforcement and heard by the courts.

The communication concerns involved with this particular decision are not as significant as those which must be considered in others. The primary communication concern would be to ensure that law enforcement and the courts are made aware of how DMV will be classifying the license status of these individuals. In actual cases where law enforcement or the courts will be checking the driving record of individuals, communication of the status will not be a concern, as the status will be displayed in the appropriate field on the individual's record.

This decision would have little fiscal impact upon the agency; the primary impact would be the effort required of ITS staff to perform the programming necessary to modify the license status that is reflected on the driving records of individuals impacted.

There is no explicit language in the new law that directs DMV to change the license status of the individual who has satisfied all reinstatement requirements but has not yet satisfied the proof of legal presence requirement prior to reinstatement. However, the language of the new law provides that DMV is not to **issue** a license to persons who are required to provide proof of legal presence, until documentary evidence of their legal presence has been provided. Thus, the language in the statute would seem to prohibit issuance of a document, but it would not appear to be the intent that the individual's driving privilege remain revoked or suspended until proof of legal presence is provided.

DMV Recommended Decision:

In order to promote fairness for drivers who have satisfied all reinstatement requirements except proof of legal presence, DMV recommends, subject to approval by the Attorney General's Office, that the record for any revoked or suspended, license be changed to reflect a "not licensed" status if all compliance actions have been satisfied and proof of legal presence is the only requirement still pending. If records are modified this way, pending compliance with the legal presence requirement, any person who drives would be cited for driving without a license, which carries a lesser penalty than driving under suspension or revocation and any person who is applying for a license in another state will not be required to prove legal presence in Virginia in order to clear their Virginia DMV record. .

DMV Commissioner's Signature

Date

Panel Recommended Decision:

In order to promote fairness for drivers who have satisfied all reinstatement requirements except proof of legal presence, the Panel recommends, subject to approval by the Attorney General's Office, that the record for any revoked or suspended, license be changed to reflect a "not licensed" status if all compliance actions have been satisfied and proof of legal presence is the only requirement still pending. If records are modified this way, pending compliance with the legal presence requirement, any person who drives would be cited for driving without a license, which carries a lesser penalty than driving under suspension or revocation and any person who is applying for a license in another state will not be required to prove legal presence in Virginia in order to clear their Virginia DMV record.

Panel's Signature

Date

Secretary's Recommended Decision:

Secretary's Signature

Date

Governor's Recommended Decision:

Governor's Signature

Date