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Summary of State Laws on the Issuance of Driver's Licenses

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Summary

The September 11, 2001 terrorist attacks and recent events in California have prompted a series of questions and debate concerning states' issuance of driver's licenses to illegal aliens. Proponents contend that allowing illegal immigrants to obtain driver's licenses is a matter of public safety. Licensed drivers know the rules of the road and can buy insurance, thus making streets safer for everyone. Conversely, opponents argue that allowing illegal immigrants to obtain driver's licenses compromises national security. Moreover, opponents contend that permitting illegal aliens to obtain driver's licenses encourages such individuals to remain in the United States illegally. Thus, opponents contend that illegal immigrants should not be rewarded with such privileges. This report will briefly summarize the policy arguments related to states' issuance of driver's licenses to undocumented or illegal aliens. In addition, this report includes a state-by-state summary of the state laws on issuing licenses to immigrants. This report will be updated as developments warrant.

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Summary of State Laws on the Issuance of Driver's Licenses

The September 11, 2001 terrorist attacks, changes in California law, and ongoing debate in other states have prompted controversy and questions concerning issuing drivers licenses to aliens who are in the U.S. in violation of U.S. immigration laws. Those who favor issuing licenses to residents regardless of immigration status cite public safety and the de facto long-term presence of illegal aliens as part of their communities. Licensed drivers, they contend, know the rules of the road and can buy insurance, thus making streets safer for everyone. Conversely, opponents argue that allowing illegal immigrants to obtain driver's licenses compromises national security. Moreover, opponents contend that permitting illegal aliens to obtain driver's licenses rewards illegal behavior and encourages illegal aliens to remain in the United States.

Eligibility for driver's licenses is first and foremost a matter of state law. This report offers a state-by-state summary of state statutes and published regulations on two types of requirements that bear on the eligibility of illegal aliens for driver's licenses: (1) evidence of legal presence in the U.S. and (2) the provision of a valid Social Security number. States take a variety of approaches. About half the states have some explicit statutory or published regulatory requirement that an applicant demonstrate lawful presence in the U.S. On the other hand, over 40 states require that an applicant submit a valid Social Security number, a requirement that can foreclose issuing licenses to illegal aliens because they are ineligible to receive such numbers. However, the Social Security number requirements in many states are limited. For example, some allow for exceptions for applicants who demonstrate that they are exempt or ineligible under law from obtaining or disclosing a Social Security number. At least three states — Maryland, Oregon, and Vermont — do not explicitly require either proof of legal presence or a Social Security number.

Though the states have traditionally set requirements for driver's licenses, Congress also may have a role. The power to regulate immigration and commerce; the ability to set conditions on the receipt of federal funds, and the discretion to set standards for identification documents that can be accepted for purposes of federal programs, all are examples of congressional authority that can affect the issuance of

state driver's licenses to illegal aliens.¹ Nevertheless, some Congressional action in this direction has been controversial.²

So, at least as of now, state law governs. In compiling the chart below, we looked either at hard copy or at Lexis or Westlaw versions of state codes and regulations. As was helpful, we also looked at official websites of the Department of Motor Vehicles, or its equivalent. Again, we emphasize that the chart is limited to published laws and regulations. Those states which allow an exception to the Social Security number requirement are annotated.

For a variety of reasons, these may not indicate actual state practice in some instances. The case of Maryland is illustrative. State law does not require legal presence as a criterion for eligibility for a license. Nonetheless, the Motor Vehicle Administration, exercising its discretion to set standards for documents that may be accepted to indicate eligibility under other criteria — age and bona fide residency, for example — promulgated a list of acceptable documents that makes it difficult for illegal aliens to show eligibility. Reportedly, the actual practice of MVA employees is even more restrictive: it is alleged that no documents available to aliens here without legal status have been sufficient.³ The Maryland Attorney General issued an opinion that at once recognized that no license restriction exists in state statute and approved administrative practice even though it effectively added a new alienage

¹ Several bills have been introduced in the 108th Congress which address the issue of driver's licenses. For example, H.R. 655 would bar Federal agencies from accepting for any identification-related purpose a state-issued driver's license, or other comparable identification document, unless the state requires a license or comparable document issued to a nonimmigrant alien to expire upon the expiration of the alien's authorized period of stay in the United States. This bill also directs the Attorney General to make grants to assist states in issuing appropriate licenses and identification documents. H.R. 1121 would require an alien to produce a valid nonimmigrant visa to obtain a driver's license or state identification card in the United States. Moreover, such a license would only be valid during the validity period of the alien's nonimmigrant visa. H.R. 3052 would withhold funds from states which have enacted laws that allow the issuance of an identification card or driver's license to an alien who is not legally authorized to be in the United States.

² As an example, in § 656 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208, Division C) Congress provided federal standards for state driver's licenses and birth certificates when used as identification-related documents for federal purposes. A state had two choices under this provision. It could require that each of its licenses include the licensee's Social Security number in machine-readable or visually-readable form. Or the state could more minimally require that each applicant submit the applicant's Social Security number and verify the legitimacy of that number with the Social Security Administration. However, this section proved controversial shortly after its enactment, with opponents most frequently alleging that it could be construed as a step toward a national identification card system. Congress blocked funds to implement regulations aimed at assisting the states to adopt the Social Security number requirements, and the underlying requirement itself was subsequently repealed in § 355 of the Department of Transportation and Related Agencies Appropriations Act, 2000 (P.L. 106-69).

³ Nurith C. Aizenman, "*Licensing Foreign Drivers Studied*", Washington Post, October 13, at B01.

standard for license eligibility.⁴ The ultimate effect of this opinion remains unclear. It appears from state websites and other secondary sources that similar disparities between statute and practice may exist in other states as well.

⁴ 88 Opinions of the Attorney General _____ (2003), Opinion No. 03-014 (September 12, 2003).

**Table 1: State Statutes Governing
Issuance of Driver's Licenses to Aliens**

Alabama		
Lawful presence requirement	Yes	“All applicants for an original Alabama Driver license or identification card must submit proof of authorized presence in the United States as authorized under federal law.” Ala. Admin. Code r. 760-X-1-.20.
SSN Required?	Yes^E	Ala. Admin. Code r. 760-X-1-.19, 760-X-1-.20. <i>But see</i> 2002 Ala. AG LEXIS 180 (June 27, 2002) allowing <i>exception</i> for aliens with valid non-work-authorized visas who cannot obtain Social Security numbers.
Alaska		
Lawful presence requirement:	No	
SSN Required?	Yes^E	<i>If an applicant has been issued a Social Security number, the applicant must include it on the driver's license application.</i> Alaska Stat. § 28.15.061.
Arizona		
Lawful presence requirement	Yes	“Notwithstanding any other provision of law, the department shall not issue to or renew a driver license or nonoperating identification license for a person who does not submit proof satisfactory to the department that the applicant's presence in the United States is authorized under federal law.” Ariz. Rev. Stat. Ann. § 28-3153(D).
SSN Required?	Yes^E	An application must state the “social security number of the applicant unless the application is for a nonresident commercial driver license.” Ariz. Rev. Stat. Ann. § 28-3158(D)(5), (E).

Arkansas		
Lawful presence requirement:	Yes	“The Officer of Driver Services shall not issue any license under this act to any person...who is making an initial application for an Arkansas driver’s license and who is not lawfully in the United States...” Ark. Code Ann. § 27-16-604(a)(10).
SSN Required?	Yes^E	“Every applicant shall supply his or her social security number on the application form <i>when he or she has been assigned a number . . .</i> ” Ark. Code Ann. § 27-16-701.
California		
Lawful presence requirement:	Yes	“The department shall not issue an original driver’s license or identification card to any person who does not submit satisfactory proof that the applicant’s presence in the United States is authorized under federal law.” Cal. Veh. Code § 12801.5. <i>Lawful presence requirement repealed as of 1/1/2004.</i>
SSN Required?	Yes^E	“Notwithstanding any other provision of law, the department shall require every application for a driver’s license to contain the applicant’s social security number and any other number or identifier determined to be appropriate by the department.” Cal. Veh. Code § 12801. Under case law, a SSN may not be required of a noncitizen applicant who is ineligible for one if the noncitizen’s presence is otherwise authorized under federal law. <i>See Lauderbach v. Zolin</i> , 35 Cal. App. 4th 578 (1995).
Colorado		
Lawful presence requirement:	Yes	A permit may not be issued to “any person whose presence in the United States is in violation of federal immigration laws.” Colo. Rev. Stat. § 42-2-104. <i>See also</i> § 42-2-107.
SSN Required?	Yes^E	An applicant must submit the applicant’s Social Security if the applicant has one. If the applicant does not have a Social Security number, the applicant must submit a sworn affidavit to that effect. Colo. Rev. Stat. § 42-2-107.

Connecticut		
Lawful presence requirement:	Yes	An applicant for a motor vehicle operator's license, and an applicant for an identification card... shall be required to indicate whether he is a U.S. citizen. If any applicant indicates that he is not a U.S. citizen, the applicant is required to submit evidence that he is a lawful resident of the State of Connecticut. Such evidence may consist of any currently valid document issued to the applicant by the Immigration and Naturalization Service of the U.S. Department of Justice. Conn. State Agencies § 14-137-64a.
SSN Required?	No	
Delaware		
Lawful presence requirement:	No	Temporary legislation requiring legal presence apparently has lapsed, and no permanent requirement has apparently been enacted.
SSN Required?	Yes^E	Every application shall state the name and Social Security number, if eligible. Del. Code. Ann. tit. 21 § 2711.
District of Columbia		
Lawful presence requirement:	No	
SSN Required?	Yes	"The Mayor shall require an applicant for an operator's permit to provide a social security number . . . " D.C. Code § 50-1401.01(b).
Florida		
Lawful presence requirement:	Yes	An applicant must submit one of the following: a certified copy of a U.S. birth certificate; a valid U.S. passport; an alien registration receipt card (green card); an employment authorization card issued by the U.S. Department of Justice; proof of nonimmigrant classification provided by the U.S. Department of Justice; or a driver's license that was issued by another jurisdiction on the basis of one the foregoing documents. Fla. Stat. Ann. § 322.08.
SSN Required?	Yes	Each such application shall include the following information regarding the applicant:...Social Security card number. Fla. Stat. Ann. § 322.08.

Georgia		
Lawful presence requirement:	Yes	“[N]o person shall be considered a resident for purposes of this chapter unless such person is either a United States citizen or an alien with legal authorization from the U.S. Immigration and Naturalization Service.” Ga. Code Ann § 40-5-1(15).
SSN Required?	No	
Hawaii		
Lawful presence requirement:	No	
SSN Required?	Yes^E	Every application must include the applicant’s Social Security number if the applicant is eligible for one.17 Haw. Rev. Stat. Ann. § 286-111.
Idaho		
Lawful presence requirement:	Yes	“The examiner shall obtain the following from the applicant:...the applicant’s social security number as verified by his social security card or by the social security administration...” unless other <i>proof of lawful presence</i> is shown. Idaho Code § 49-2443.
SSN Required?	Yes^E	“The examiner shall obtain the following from the applicant:...the applicant’s social security number as verified by his social security card or by the social security administration...” unless other proof of lawful presence is shown. Idaho Code § 49-2443.

Illinois		
Lawful presence requirement:	No	
SSN Required?	Yes^E	An applicant must submit Social Security number unless applicant is prohibited by bona fide religious conviction from applying for SSN or is exempt from applying for one. 625 Ill. Comp. Stat. 5/6-106(b).
Indiana		
Lawful presence requirement:	No	
SSN Required?	Yes	Ind. Code Ann. § 9-24-9-2 (2002).
Iowa		
Lawful presence requirement:	No	
SSN Required?	Yes	“A person who applies for a new driver’s license or nonoperator’s identification card or a duplicate license...shall submit proof of age, identity and social security number.” Iowa Admin. Code r. 761-601.5(321) (2003).
Kansas		
Lawful presence requirement:	Yes	“The division shall not issue any driver’s license to any person who is not lawfully present in the United States.” Kan. Stat. Ann. § 8-240(b)(3).
SSN Required?	No	

Kentucky		
Lawful presence requirement:	Yes	“The application form shall be accompanied by the person’s documentation issued by the United States Department of Justice, Immigration and Naturalization Service, authorizing the person to be in the United States...” Ky. Rev. Stat. Ann. § 186.412(4)(a) (2002).
SSN Required?	Yes^E	“The application form shall require the person’s:... (c) Social Security number, federal tax identification number, a letter from the Social Security Administration declining to issue a Social Security number, or a notarized affidavit from the applicant to the Transportation Cabinet swearing that the person either does not have a Social Security number, or refuses to divulge his or her Social Security number, based upon religious convictions...” Ky. Rev. Stat. Ann. § 186.412 (2002).
Louisiana		
Lawful presence requirement:	Yes	“Any alien individual residing in Louisiana who does not possess and is ineligible to obtain a social security number shall not be required to furnish a social security number for issuance of a...driver’s license. However, prior to the issuance of a...driver’s license, in addition to other required documentation, the department shall require the alien individual to present a document demonstrating lawful presence in the United States in a status in which the alien individual may be ineligible to obtain a Social Security number. The list of acceptable documents demonstrating lawful presence shall be determined by the department.” La. Rev. Stat. Ann. § 32:409.1.
SSN Required?	Yes	La. Rev. Stat. Ann. § 32:409.1 (2003).
Maine		
Lawful presence requirement:	No	
SSN Required?	Yes	Me. Rev. Stat. Ann. 29 § 1301 (2002).

Maryland		
Lawful presence requirement:	No	
SSN Required?	No	
Massachusetts		
Lawful presence requirement:	No	
SSN Required?	Yes	SSN is required as proof of identity. 540 CMR 2.06(3)(b).
Michigan		
Lawful presence requirement:	No	
SSN Required?	Yes^E	<p>Applicant for an operator's or chauffeur's license must provide, "to the extent required to comply with federal law, the applicant's social security number." Mich Comp. Laws Ann. § 257.307(1)(a) (2001).</p> <p>But, "A requirement under this section to include a social security number on an application does not apply to an applicant who demonstrates he or she is exempt under law from obtaining a social security number or to an applicant who for religious convictions is exempt under law from disclosure of his or her social security number under these circumstances." Mich. Comp. Laws Ann. § 257.307(12).</p>

Minnesota		
Lawful presence requirement:	Yes	“The applicant must attest to a residence address in Minnesota and demonstrate proof of either lawful short-term admission to the United States, permanent United States resident status, indefinite authorized presence status, or United States citizenship.” MINN. R. 7410.0410 subpart 1 (2002).
SSN Required?	No	For Class D licenses (the primary category), providing the applicant’s SSN is optional. SSNs are required for other license categories. MINN. ST. § 171.06 subd. 3(a) (2002) requires that “[a]n application must . . . (3) for a class C, class B, or class A driver’s license, state the applicant’s social security number, or, for a class D driver’s license, have a space for the applicant’s social security number and state that providing the number is optional, or otherwise convey that the applicant is not required to enter the social security number . . .”
Mississippi		
Lawful presence requirement:	Yes	MISS. CODE ANN. § 63-1-19 (2) (2002): “No person who is illegally in the United States or Mississippi shall be issued a license.”
SSN Required?	Yes^E	§ 63-1-19 (1)(c) requires that applicants who are United States citizens provide their SSN, in accordance with § 93-11-64. § 63-1-19 (2) provides that “[t]he application of a person who is not a United States citizen and who does not possess a social security number issued by the United States government shall state the name, date of birth, sex, race, color of eyes, color of hair, weight, height and residence address, and whether or not the applicant’s privilege to drive has been suspended or revoked at any time...”

Missouri		
Lawful presence requirement:	No	
SSN Required?	Yes^E	<p>“Every application [for a license] shall state the full name, Social Security number, age, height, weight, color of eyes, sex, residence, mailing address of the applicant . . .” Mo. Ann. Stat. § 302.171(1) (2002).</p> <p>But, applicants without a SSN may submit “notarized affidavit . . . signed by the applicant stating that the licensee does not possess a Social Security number . . .” Mo. Ann. Stat. § 302.181(1).</p>
Montana		
Lawful presence requirement:	No	<p>No explicit requirement, but applicants must submit at least one item from a list of primary documents, including identity documents issued by the U.S. or Canada; valid passports from other countries, if accompanied by an INS I-94 form or I-551 stamp; or valid INS documents. Mont. Admin. R. 23.3.131(2)(d)-(e) (2002).</p> <p>Applicants may request approval in the absence of primary documentation in “rare, extremely extenuating circumstances.” Mont. Admin. R. 23.3.131(4) (2002).</p>
SSN Required?	Yes	“Applications must include the applicant’s Social Security number.” Mont. Code Ann. § 61-5-107(2).
Nebraska		
Lawful presence requirement:	No	
SSN Required?	Yes	Neb. Rev. Stat. Ann. § 60-484(4) (2002).

Nevada		
Lawful presence requirement:	No	Applicants must provide proof of age; applicants born outside the U.S. must provide U.S. government documentation, or “a driver’s license issued by another state or the District of Columbia or other proof acceptable to the department other than a passport issued by a foreign government.” Nev. Rev. Stat. Ann. 483.290(2)(b) (2002).
SSN Required?	Yes^E	“Every applicant who has been assigned a social security number must furnish proof of his social security number . . .” Nev. Rev. Stat. Ann. 483.290(4) (2002).
New Hampshire		
Lawful presence requirement:	No	
SSN Required?	Yes	SSNs are required to be provided by first time applicants but not by those seeking renewals. N.H. § 263:40-A.
New Jersey		
Lawful presence requirement:	Yes	“Each applicant for a license, permit or non-driver identification card shall be required to furnish to the Commission, upon request, proof of identity and date of birth and proof that the applicant’s presence in the United States is authorized under Federal law.” N.J.A.C. § 13:21-8.2.
SSN Required?	Yes	“For all licenses issued or renewed in the State after the effective date of P.L. 1996, c. 7(C.2A:17-56.41 et seq.), the licensing authority shall record the full name, mailing address, Social Security number and date of birth of the applicant or licensee.” N.J. STAT. § 2A:17-56.44(e).

New Mexico		
Lawful presence requirement:	Yes	Noncitizen applicants who are ineligible for a SSN must provide “proof that they are in the United States legally or in compliance with United States Immigration and Naturalization Service (INS) regulations.” N.M. Admin. Code tit. 18, § 19.5.12.
SSN Required?	Yes	“An application shall contain the full name, social security number or individual tax identification number, date of birth, sex and New Mexico residence ...” N.M. Stat. Ann. 66-5-9 (2002).
New York		
Lawful presence requirement:	No	
SSN Required?	Yes^E	An applicant for a license or a non-driver identification card or an applicant renewing such a license or such identification card must submit his or her Social Security number or provide proof that he/she is not eligible for a Social Security number. 15 NYCRR § 3.9 (2003).
North Carolina		
Lawful presence requirement:	No	
SSN Required?	Yes	“The application form shall request all of the following information... (5) the applicant’s valid social security number. The Division shall not issue a license to an applicant who fails to provide the applicant’s social security number.” N.C. Gen. Stat. § 20-7 (2003).

North Dakota		
Lawful presence requirement:	No	
SSN Required?	Yes	Every application must include the applicant's Social Security number. N.D. Cent. Code, § 39-06-07.
Ohio		
Lawful presence requirement:	Yes	Aliens other than legal permanent resident aliens are eligible for non-renewable licenses only. Legal presence is a requirement for obtaining a non-renewable license. OAC Ann.4501:1-1-37 (Anderson 2003).
SSN Required?	Yes^E	"The registrar shall do both of the following: (1) Require every applicant for a driver's license, temporary instruction permit, commercial driver's license, or identification card to submit the applicant's social security number, if one has been assigned;(2) Verify that the number is valid." ORC Ann. 4501.31 (Anderson 2002).
Oklahoma		
Lawful presence requirement:	Yes	Aliens must present valid documentation of "identity issued pursuant to the laws of the United States." Okl. St. § 6-103 (2003).
SSN Required?	Yes	"Every applicant for a driver license shall state upon the application...social security number..." 47 Okl. St. § 6-106 (2003).
Oregon		
Lawful presence requirement:	No	
SSN Required?	No	ORS § 807.050 (2001) requires applicants for commercial licenses to provide SSN.

Pennsylvania		
Lawful presence requirement:	Yes	A noncitizen may apply for a license upon establishing a “lawful presence in the United States.” 75 Pa. C. S. § 1510.
SSN Required?	Yes^E	“An applicant shall include his social security number on his license application,” but this requirement is waived for “an otherwise eligible person who has no social security number if the person submits a waiver obtained from the federal government permitting him not to have a social security number.” 75 Pa. C. S. § 1510.
Rhode Island		
Lawful presence requirement:	No	
SSN Required?	No	
South Carolina		
Lawful presence requirement:	Yes	The term “resident of South Carolina” shall expressly include all persons authorized by the United States Department of Justice, the United States Immigration and Naturalization Service, or the United States Department of State to live, work, or study in the United States on a temporary or permanent basis who present documents indicating their intent to live, work, or study in South Carolina. S.C. Code Ann. § 56-1-40.
SSN Required?	Yes	S.C. Code Ann. § 56-1-90 (2002).
South Dakota		
Lawful presence requirement:	Yes	“Any [noncitizen] applicant... shall, on making application for an operator’s license..., present a naturalization and immigration record authorizing the applicant’s presence in the United States...”S.D. Codified Laws § 32-12-3.1 (2002).
SSN Required?	Yes	S.D. Codified Laws § 32-12A-14 (2002).

Tennessee		
Lawful presence requirement:	No	
SSN Required?	Yes	Tenn. Code Ann. § 55-50-331 (2002). The statute requires Division of Motor Vehicles to create a form; form requires SSN, but statute does not explicitly require it.
Texas		
Lawful presence requirement:	No	
SSN Required?	Yes^E	The Social Security number shall be obtained from all applicants who have been issued a number by the United States Social Security Administration. 37 TAC § 15.42 (2003).
Utah		
Lawful presence requirement:	No	
SSN Required?	Yes^E	An application must include an applicant's "Social Security number or temporary identification number (ITIN) issued by the Internal Revenue Service for a person who does not qualify for a Social Security number. Utah Code Ann. § 53-3-205 (2003).
Vermont		
Lawful presence requirement:	No	
SSN Required?	No	

Virginia		
Lawful presence requirement:	Yes	“Notwithstanding any other provision of this title, the Department shall not issue an original license, permit, or special identification card to any applicant who has not presented...valid documentary evidence that the applicant is either (i) a citizen of the United States, (ii) a legal permanent resident of the United States, or (iii) a conditional resident alien of the United States.” Va. Code Ann. § 46.2-328.1.
SSN Required?	Yes	“Every application shall state... social security number, sex, and residence address of the applicant...” Va. Code Ann. § 46.2-323.
Washington		
Lawful presence requirement:	No	
SSN Required?	Yes^E	An applicant is required to include his or her Social Security number “ <i>if the social security number is required by state or federal law</i> [e.g., in order to comply with welfare/child support requirements]. If the person’s Social Security number is not required by state or federal law, the person may voluntarily provide his or her Social Security number in order to assist the department in verifying identity.” Wash. Admin. Code § 308-104-014.
West Virginia		
Lawful presence requirement:	No	
SSN Required?	No	

Wisconsin		
Lawful presence requirement:	No	
SSN Required?	Yes^E	Application must include applicant's Social Security number <i>if he or she has one</i> , but if the applicant does not have one he or she may alternatively include "a statement made or subscribed under oath or affirmation that the applicant does not have a social security number." Wis. Stat. § 343.14 (2002).
Wyoming		
Lawful presence requirement:	Yes	No license may be issued or renewed for an individual who is in violation of the immigration laws of the United States. Wyo. Stat. Ann. § 31-7-108 (2002).
SSN Required?	Yes^E	Each application is to contain the applicant's "social security number or <i>other numbers or letters deemed appropriate . . .</i> " Wyo. Stat. Ann. § 31-7-111 (2002).

Note: This table is based on published statutes and regulations only and does not reflect unpublished rules or administrative policies.

^E State allows an exception to the Social Security number requirement.