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Drivers' Licenses HB 475

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MOTOR VEHICLES AND TRAFFIC

Drivers' Licenses: Amend Chapter 5 of Title 40 of the Official Code of Georgia Annotated, Relating to Drivers' Licenses, so as to Authorize the Commissioner of Driver Services to Enter into Reciprocal Agreements on Behalf of Georgia for the Recognition of Drivers' Licenses Issued by Foreign Territories; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 40-5-5, -27 (amended)
BILL NUMBER:	HB 475
ACT NUMBER:	124
GEORGIA LAWS:	2013 Ga. Laws 281
SUMMARY:	The Act provides the Governor the ability to execute binding reciprocal agreements with foreign countries in terms of operating motor vehicles. The Act, further, exempts citizens of the country, which the Governor has entered into an agreement with, from taking either the knowledge test or the on the road driving test. Finally, it alters the language in O.C.G.A. § 40-5-27 to reflect these agreements.
EFFECTIVE DATE:	July 1, 2013

History

Overview of Drivers' License Laws

Who can drive in Georgia, and what processes are required to do so legally? A network of state and federal law governs these questions. For a Georgia resident who has never before held a license, the process is fairly straightforward. Among other requirements, the individual must provide proof of Georgia

residency, must be eighteen years of age, and must pass written, vision, and road exams.[1]

Residents of other states are not eligible for Georgia drivers' licenses, but can acquire a driver's license from their state of residence, which will usually provide for similar requirements as those in Georgia.[2] These individuals are nevertheless able to drive in Georgia with their out-of-state licenses.[3] However, if a person with an out-of-state driver's license moves to Georgia, the person must apply for a Georgia driver's license within thirty days of becoming a Georgia resident.[4] Because such individuals have already passed written and road exams in another state with mostly uniform traffic laws, Georgia law spares these individuals the hassle of repeating these exams in Georgia. Instead, under a *reciprocity* regime, these individuals can, upon passing a vision exam, simply exchange their out-of-state driver's license for a Georgia driver's license.[5]

For individuals from outside the United States, the question is more complex, and involves some federal law.[6] In general, an individual that is not a United States citizen but that holds a valid foreign driver's license is allowed to drive in Georgia for tourism or business purposes.[7] However, if the license is not in English, the

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1. *New to Georgia*, GEORGIA DEP'T OF DRIVER SERVS. (Jan. 15, 2013), http://www.dds.ga.gov/drivers/dldata.aspx?con=1744173714&ty=dl.

2. *See, e.g.*, *Initial Driver License*, SOUTH CAROLINA DEP'T OF MOTOR VEHICLES, http://www.scdmvonline.com/dmvnew/default.aspx?n=initial_driver_license (last visited July 20, 2013).

3. *Id.*

4. *New to Georgia*, *supra* note 1.

5. *Id.* Correspondingly, Georgia drivers' license holders are given the same treatment in other states. *See, e.g.*, *Initial Driver License, supra* note 2.

6. The United States has entered a number of agreements with foreign countries bearing on the question of when and under what circumstances foreign drivers can drive in the United States. The first international agreement was the *Convention on the Regulation of Inter-American Traffic*, which was signed during World War II. Convention on the Regulation of Inter-American Automotive Traffic, *opened for signature* Dec. 15, 1943, 61 Stat. 1129. The United Nations' *Convention on Road Traffic* expanded the *Convention on the Regulation of Inter-American Traffic* to countries outside the Americas. Convention on Road Traffic, Sept. 19, 1949, 3 U.S.T. 3008 (entered into force Mar. 26, 1952). This broader convention allows citizens of foreign countries around the world, who are over 18 and have a valid driver's license from their home country to drive in the United States provided the foreign driver obtains an *International Driver's Permit* ("IDP"), governed and administered by the United States or one of its states. *Id.* The 1949 Convention allowed IDPs to be valid for up to one year after issuance. *Id.* Although the 1968 *Convention on Road Traffic* attempted to expand the timeframe for validity of IDPs to three years, the United States never ratified this treaty and therefore IDPs continue to be valid for only one year in the United States. *See id.*; AM. ASS'N OF MOTOR VEHICLE ADM'RS, FOREIGN RECIPROCITY RES. GUIDE 13 (2009).

7. *Information for Non-US Citizens*, GA. DEP'T OF DRIVER SERVS. (July 17, 2012),

driver must acquire an "International Driving Permit (IDP) . . . issued in accordance with the provision of the Convention on Road Traffic" or similar agreement.[8] And as with the out-of-state individuals discussed above, if the non-U.S. citizen establishes residency in Georgia, he must obtain a Georgia driver's license within thirty days.[9]

HB 475

The question then becomes what is the proper procedure for foreign citizens to acquire Georgia drivers' licenses. Prior to the passage of House Bill (HB) 475, the foreign citizen was required, among other requirements, to pass both written and road exams.[10] This was true regardless of how similar the individual's home country's driving laws were to those in Georgia.[11] Thus, foreign citizens working in Georgia and wishing to comply with Georgia law faced sometimes substantial inconvenience in acquiring drivers' licenses for themselves and their families.[12]

Many other states, recognizing this hardship, adopted reciprocity agreements with foreign countries.[13] These reciprocity agreements paralleled those adopted between the states: because the foreign driver had already passed road and written exams to drive in their home country, these exams would be waived in acquiring a driver's license of that state, so long as the foreign country reciprocated.[14] For the most part, adoption of such agreements stems from a desire to

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http://www.dds.ga.gov/drivers/dldata.aspx?con=1741471757&ty=dl.

8. *Id.*

9. *Id.* Individuals will be considered residents if either "[the] person accepts employment or engages in trade in Georgia, and enrolls his or her children in private or public school within ten days after the commencement of employment; or [the] person has been present in the state for 30 or more days." *Id.*

10. *Id.* ("The pre-requisites for issuance of a Georgia driver's license include passing tests relating to vision, knowledge of our traffic laws (including road signs), and driving skills. Also, to be issued a Georgia's driver's license, the driver must be a United States citizen or have lawful presence in the United States.").

11. *See* O.C.G.A. § 40-5-27(a) (2011).

12. *See* Interview with Rep. B.J. Pak (R-108th), (Apr. 30, 2013) [hereinafter Pak Interview].

13. *See, e.g.*, *Appendix M: International Drivers' Licenses and Reciprocity Update*, MICHIGAN.GOV (Feb. 16, 2012), http://www.michigan.gov/documents/reciprocity_chart_20508_7.pdf (detailing Michigan's reciprocity arrangements with foreign countries).

14. *Id.*

encourage foreign direct investment within the state.[15] Further, states have adopted such agreements with foreign countries at increasing rates, as the last several years have seen increased competition between the states for foreign direct investment.[16]

In Georgia, the Governor lacked any authority to enter into such agreements, so any movement on this issue required a legislative fix.[17] Georgia's foreign direct investment initiatives are overseen within the Department of Economic Development, which continually evaluates Georgia's competitiveness as a place to invest and do business.[18] The Department, along with the Georgia Chamber of Commerce, recently began to lobby the legislature to adopt means by which Georgia could enter into reciprocity agreements with foreign countries.[19] Other states with which Georgia competes for foreign investment, such as Alabama, South Carolina, and Florida, had previously adopted such agreements.[20] Lacking such agreements, Georgia stood at a disadvantage in competition for job-creating foreign investment.[21]

Bill Tracking of HB 475

Consideration and Passage by the House

Representatives B.J Pak (R-108th), Matt Ramsey (R-72nd), Tom Rice (R-95th), Ron Stephens (R-164th), Alan Powell (R-32nd), and Matt Hatchett (R-150th) sponsored HB 475 in the House of Representatives.[22] The House read the bill for the first time on February 25, 2013 and for the second time on February 26, 2013.[23]

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15. *See* Pak Interview, *supra* note 12.
16. *Id.*
17. *See id.*
18. *See* Telephone Interview with Elmer Stancil, Government Relations and Policy Director, Georgia Department of Economic Development (May 24, 2013); *FDI – Foreign Direct Investment*, GA. DEP'T OF ECON. DEV., http://www.georgia.org/business-resources/Pages/fdi-foreign-direct-investment.aspx (last visited July 20, 2013).
19. *See* Pak Interview, *supra* note 12.
20. *See id.*; ALA. CODE § 32-6-10 (West, Westlaw through 2013); FLA. STAT. ANN. § 322.02(4) (West, Westlaw through 2013); S.C. CODE ANN. § 56-1-30(6) (West, Westlaw through 2013).
21. *See* Pak Interview, *supra* note 12.
22. *See* Georgia General Assembly, HB 475, Bill Tracking, http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/475.
23. State of Georgia Final Composite Status Sheet, HB 475, May 27, 2013.

HB 475 was assigned to the House Committee on Motor Vehicles,[24] which recommended the bill with its favorable support.[25] There was no floor debate in the house and the bill passed on March 5, 2013 by a vote of 174 to 2.[26]

Consideration and Passage by the Senate

Senator David Shafer (R-48th) sponsored the bill in the Senate.[27] The Senate read the bill for the first time on March 7, 2013 and the Lieutenant Governor assigned it to the Senate Public Safety Committee and the Senate Transportation Committee.[28] The Senate Public Safety Committee reported favorably on the bill on March 20, 2013 and the Senate read the bill for the second time on March 21, 2013 and the third time on March 26, 2013.[29] The Senate Transportation Committee proposed two amendments to the bill.[30] The first amendment guarantees that driving safety will not be compromised and restricts the Georgia Driver Services Commissioner from entering into agreements with certain countries,[31] while the second amendment identifies new licenses of foreigners as limited term licenses.[32] The Senate passed the bill as amended by a vote of 42 to 3.[33] The bill was transferred back to the House and on March 28, 2013 the House passed the bill as amended with a vote of 108 to 55.[34] The House sent the bill to the Governor on April 3, 2013 and it was signed by the Governor on May 1, 2013.[35]

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24. *Id.*
25. Video Recording of House Floor Proceedings, Mar. 5, 2013 at 38 min., 16 sec. (remarks by Rep. David Ralston (R-7th)), http://www.gpb.org/lawmakers/2013/day-29.
26. *Id.*; Georgia House of Representatives Voting Record, HB 475 (Mar. 5, 2013).
27. *See* Georgia General Assembly, HB 475, Bill Tracking, http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/475.
28. State of Georgia Final Composite Status Sheet, HB 475, May 27, 2013.
29. *Id.*
30. *Compare* HB 475, as introduced, § 1, pg. 1, ln. 21–24, 2013 Ga. Gen. Assem., *with* O.C.G.A. § 40-5-5 (Supp. 2013).
31. *See* HB 475 (AM 35 0347), 2013 Ga. Gen. Assem.; Video Recording of Senate Floor Proceedings, Mar. 26, 2013 at 2 hr. 32 min. (remarks by Sen. Charlie Bethel (R-54th)), http://www.gpb.org/lawmakers/2013/day-39 [hereinafter Senate Floor].
32. HB 475 (AM 35 0344), 2013 Ga. Gen. Assem.; Senate Floor, *supra* note 31, at 2 hr., 32 min. (remarks by Sen. Charlie Bethel (R-54th)), http://www.gpb.org/lawmakers/2013/day-39.
33. Georgia Senate Voting Record, HB 475 (May 27, 2013).
34. State of Georgia Final Composite Status Sheet, HB 475, May 27, 2013.
35. *Id.*

The Act

The Act amends Title 40 of the Official Code of Georgia Annotated giving the Governor the ability to enter into reciprocal agreements for the recognition of class C driver's licenses with foreign countries.[36] Section 1 of the Act exempts citizens from the knowledge and on-the-road-test as provided in Code section 40-5-27, as long as the citizen holds a valid driver's license from a foreign country that Georgia has an agreement with.[37] Additionally, it requires reciprocity, meaning that Georgia citizens with a valid Georgia driver's license would be able to receive a foreign license in a country where the Georgia Driver Services Commissioner agrees to reciprocity.[38]

The Senate amended the Act to verify that the foreign country Georgia enters into reciprocity with has driving laws, "sufficiently similar to such laws of [Georgia]."[39] The Act provides that because its focus is on economic development, any country Georgia enters into reciprocity with must, "have made or are likely to make a substantial economic investment in this state."[40] Moreover, the Commissioner is not authorized to enter into any agreements with countries that are designated as a sponsor of terrorism.[41] Finally, the Act requires that the license be marked "Limited Term" and reinforces that one of these licenses may not be used for voter registration.[42]

Section 2 of the Act alters the language of Code section 40-5-27 to reflect the changes to section 40-5-5.[43] The language now states, "Neither the on-the-road driving test nor the knowledge test shall apply to . . . [a]n applicant who is a citizen of a foreign country with which the commissioner has entered into a reciprocal agreement pursuant to subsection (c) of Code Section 40-5-5."[44]

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36. O.C.G.A. § 40-5-5(c) (Supp. 2013).
37. *Id.*
38. *Id.*
39. *Compare* HB 475 as introduced, § 1, pg. 1, ln. 21–24, 2013 Ga. Gen. Assem., *with* O.C.G.A. § 40-5-5(c) (Supp. 2013).
40. O.C.G.A. § 40-5-5(c) (Supp. 2013).
41. *Id.*
42. O.C.G.A. § 40-5-5(d) (Supp. 2013).
43. O.C.G.A. § 40-5-27 (Supp. 2013).
44. O.C.G.A. § 40-5-27(a)(3)(B) (Supp. 2013).

Analysis

Approaches to Driver's License Reciprocity

The Foreign Reciprocity Resource Guide, published by the American Association of Motor Vehicle Administrators, identifies three main categories of legislation addressing the licensure of foreign drivers.[45] In the first category, state legislation or policies grant jurisdictions authority to serve foreign drivers even in the absence of reciprocity by the foreign country.[46] In the second category, state legislation grants jurisdictional agencies broad discretion to enter agreements with foreign jurisdictions.[47] In the third category, state legislation provides jurisdictional agencies with a much more limited discretion to enter agreements with foreign jurisdictions.[48]

Many of Georgia's neighboring states—that Georgia competes with for foreign direct investment—have adopted legislation addressing the licensure of foreign drivers. Below are details on how three of Georgia's competitors for foreign direct investment enable their foreign drivers laws.

Alabama

Alabama falls most squarely in category two.[49] Alabama's reciprocal agreement is one that allows foreign nationals to have all the rights and privileges in the use of a driver's license in Alabama.[50] If, however, a foreign national is in the state for longer than 160 days they can receive an Alabama driver's license.[51] When applying for a license they must provide their country of origin as well the

45. FOREIGN RECIPROCITY RES. GUIDE, *supra* note 6, at 16.

46. *Id.* Arizona is cited as an example of such a jurisdiction. *See* ARIZ. REV. STAT. ANN. § 28-3164C (West, Westlaw through 2013).

47. FOREIGN RECIPROCITY RES. GUIDE, *supra* note 6, at 16. Arkansas is cited as an example of such a jurisdiction. In Arkansas, "The Department of Finance and Administration is authorized to enter into driver license agreements or other cooperative arrangements with foreign countries for the reciprocal recognition of drivers' licenses." ARK. CODE. ANN. § 27-16-809 (West, Westlaw through 2013).

48. FOREIGN RECIPROCITY RES. GUIDE, *supra* note 6, at 16.

49. *Compare id.*, *with* ALA. CODE § 32-6-10 (West, Westlaw through 2013).

50. ALA. CODE § 32-6-10 (West, Westlaw through 2013).

51. *Id.*

expiration date of any immigration documents.[52] Similar to Georgia's Act the license must be marked so that the person is identified as a foreign national.[53] However, Alabama makes a distinction between permanent residents and residents with a temporary status.[54] Finally, the license's expiration date is either the expiration date of the person's immigration forms, or, for permanent residents, in the time frame as a normal renewal.[55]

Florida

Florida's reciprocal agreements allow for the same privileges and exemptions in Florida as a Florida resident would have in another country.[56] In looking into the reciprocal agreements the Department of Motor Vehicles is required to look at the potential benefits for Florida residents.[57] Florida, therefore, falls into a category between the second and third by adding the restriction that the agency must look at the benefits of reciprocity to the residents of Florida. However, Florida's legislature leaves the language here very broad allowing a fair amount of discretion on the part of the Director of the Florida Department of Highway Safety and Motor Vehicles, Division of Motorist Services.[58]

South Carolina

South Carolina provides that a foreign driver's license is valid within the state for up to five years as long as certain conditions are met.[59] These conditions include: that the person works in South Carolina, the home country's licensing procedure is at least as strict as South Carolina's and the person has a driver's license from that

52. ALA. CODE § 32-6-10.1(b) (West, Westlaw through 2013).
53. ALA. CODE § 32-6-10.1(d) (West, Westlaw through 2013); O.C.G.A. § 40-5-5(d) (Supp. 2013).
54. ALA. CODE § 32-6-10.1(d) (West, Westlaw through 2013).
55. ALA. CODE § 32-6-10.1(e) (West, Westlaw through 2013).
56. FLA. STAT. ANN. § 322.02 (West, Westlaw through 2013).
57. FLA. STAT. ANN. § 322.02(1) (West, Westlaw through 2013).
58. *See* FLA. STAT. ANN. § 322.02(4) (West, Westlaw through 2013). ("The department shall have the authority to enter into reciprocal driver's license agreements with other jurisdictions within the United States and its territories and possessions and with foreign countries or political entities equivalent to Florida state government within a foreign country.").
59. S.C. CODE ANN. § 56-1-30(6) (West, Westlaw through 2013).

country, the driver is at least eighteen years old, and the foreign country allows reciprocity for South Carolina residents.[60] South Carolina's reciprocity agreement is similar to the third model agreement in that it allows reciprocity but only if specific requirements are met.[61] The most restrictive requirement being that the person is employed within the state.[62]

Georgia's Approach to Driver's License Reciprocity

In passing HB 475, Georgia selected an approach similar to category number three whereby the Georgia legislature specified certain conditions to be met before the Department of Driver Services can enter into agreements with foreign nations. These conditions include: first, that the foreign countries laws are sufficiently similar to those of Georgia and second, that the foreign country allows reciprocity for Georgia residents.[63] While this section appears to be a bit restrictive, the Act does not define sufficiently similar; therefore the Department has broad discretion as to what specific driving laws are involved.[64]

A third restriction in the Act provides that any country Georgia enters into reciprocity with must be certified as one who has or is likely to make a significant investment in the State of Georgia.[65] This stipulation restricts the agency's power, especially when negotiating with states that have very little likelihood to ever conduct trade or business within Georgia. This restriction potentially limits reciprocity agreements to first-world countries that have corporations and excess capital available to invest in Georgia. Along the same lines, the final restriction is one that does not allow Georgia to enter into reciprocity agreements with countries the United States designates as sponsors of terrorism.[66]

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60. *Id.*
61. *Id.*
62. *Id.*
63. O.C.G.A. § 40-5-5(c) (Supp. 2013).
64. *See id.*
65. *Id.*
66. *Id.*

Navigating Constitutional Concerns

Because a reciprocity agreement is an agreement between a state and a foreign country without the approval of Congress, the state faces the constitutional limitation of the Compact Clause. The United States Constitution states, "No State shall, without the Consent of Congress . . . enter into any Agreement or Compact with another State, or with a foreign Power."[67] While this clause is traditionally interpreted to apply to agreements that elevate state power over federal authority, it remains an issue that must be examined.[68]

States drivers' license reciprocity agreements have traditionally been protected by the case *United States Steel Corporation v. Multistate Tax Commission*.[69] In this case, the Supreme Court held that a multistate compact did not violate the Compact Clause, even though it was not authorized by Congress, because it did not diminish federal power or enhance state power to the detriment of federal power.[70] Because drivers' licenses are traditionally a state power and are not provided or regulated by the federal government, agreements concerning them do not elevate any state authority over that of the federal government. Therefore, state compacts, such as driver's license reciprocity agreements, remain constitutional.

States entering into agreements with foreign countries should fall under a similar analysis. However, *Holmes v. Jennison*, a case from 1840, ruled an agreement between Vermont and Canada to turn over a fugitive unconstitutional because it fell within the exclusive foreign relations power of the federal government.[71] In *McHenry County v. Brady* petitioners challenged an agreement to construct and maintain an international drainage system between North Dakota and Canada.[72] In its holding, the North Dakota Supreme Court distinguished its case from *Holmes* finding that "[Article 1 Section 10 is] directed to the formation of any combination tending to the

67. U.S. CONST. art. 1, § 10, cl. 3.
68. FOREIGN RECIPROCITY RES. GUIDE, *supra* note 6, at 15.
69. United States Steel Corp. v. Multistate Tax Comm'n, 434 U.S. 452 (1978).
70. *Id*. at 471.
71. Holmes v. Jennison, 39 U.S. 540 (1840).
72. McHenry Cnty. v. Brady, 37 N.D. 59, 163 N.W. 540 (1917).

increase of political power in the states, which may encroach upon or interfere with the just supremacy of the United States."[73]

In addition, as stated above, *U.S. Steel Corporation* took a similar view with regard to multistate reciprocity agreements.[74] State reciprocity agreements with foreign nations fall under the category of agreements that should not encroach upon the authority of Congress because drivers licenses fall within a state's jurisdiction.[75] Therefore, reciprocity agreements should remain constitutional under the Compact Clause. Nevertheless, the State Department suggests that states entering into reciprocity with a foreign nation exchange letters of understanding and non-binding memoranda of understanding setting out the substantive requirements of each jurisdiction.[76]

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73. *Id*. at 59, 163 N.W. at 544.
74. United States Steel Corp. v. Multistate Tax Comm'n, 434 U.S. 452, 471 (1978).
75. FOREIGN RECIPROCITY RES. GUIDE, *supra* note 6, at 16.
76. *Id*.