



2020 Driver Privilege Card Legislation

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Introduction

During the 2020 Regular Session, the General Assembly enacted major legislation authorizing the issuance of driver privilege cards and permits to certain applicants who are not required to provide proof of legal presence in the United States.¹ This legislation goes into effect on January 1, 2021.

During the 2003 Regular Session, the General Assembly enacted legislation prohibiting the Department of Motor Vehicles (hereinafter referred to as "the DMV") from issuing an original Virginia driver's license, permit, or photo-identification card unless the applicant shows proof that he is a United States citizen, a legal permanent resident of the United States, or a conditional resident alien of the United States.² This legislation also authorized the DMV to issue temporary driver's licenses, permits, and special identification cards to applicants who provide proof of legal presence by presenting one of the immigration documents listed in the Code of Virginia (hereinafter referred to as "the Code").³

Subsequent sessions of the General Assembly have made minor changes to the 2003 legislation, but it has remained substantially the same since it became effective in 2004.⁴ During the 2020 Regular Session, the General Assembly enacted Chapters 1227 and 1246 of the Acts of Assembly of 2020 (hereinafter referred to as "the legislation"),⁵ creating driver privilege cards and permits. The legislation also (i) renames temporary driver's licenses, permits, and special identification cards as limited-duration driver's licenses, permits, and special identification cards,

¹ HB 1211 (2020), enacted as Chapter 1227 of the Acts of Assembly of 2020; SB 34 (2020), enacted as Chapter 1246 of the Acts of Assembly of 2020.

² HB 1954 (2003), enacted as Chapter 817 of the Acts of Assembly of 2003; SB 1058 (2003), enacted as Chapter 819 of the Acts of Assembly of 2003.

³ *Id.* Applicants who are currently eligible for a limited-duration driver's license, permit, or special identification card include those with evidence of (i) a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the United States; (ii) a pending or approved application for asylum in the United States; (iii) entry into the United States in refugee status; (iv) a pending or approved application for temporary protected status in the United States; (v) approved deferred action status; (vi) a pending application for adjustment of status to legal permanent residence status or conditional resident status; or (vii) a valid, unexpired Employment Authorization Document.

⁴ *See, e.g.*, Chapter 260 of the Acts of Assembly of 2005; Chapter 872 of the Acts of Assembly of 2009; Chapter 129 of the Acts of Assembly of 2010; Chapter 396 of the Acts of Assembly of 2011; Chapter 686 of the Acts of Assembly of 2013.

⁵ *Supra* note 1.

(ii) expands eligibility for limited-duration driver's licenses, permits, and special identification cards, and (iii) limits the release of certain information stored by the DMV.

Driver Privilege Cards and Permits

The legislation creates new credentials issued by the DMV called driver privilege cards and driver privilege permits. A driver privilege card or permit confers the holder with most of the same rights and limitations conferred to the holder of a driver's license or permit. However, the legislation enumerates the following distinctions between a driver's license or permit and a driver privilege card or permit:

- The eligibility criteria are different, as discussed in more detail in the next section;
- An applicant for a driver privilege card or permit is not eligible for waivers of any part of the driver examination that are available to applicants for a driver's license;⁶
- A driver privilege card or permit expires on the applicant's second birthday following the date of issuance. Most driver's licenses expire on the applicant's eighth birthday following the date of issuance.⁷ This period is shortened to five years for applicants who are (i) 75 years of age or older or (ii) required to register with the Sex Offender and Crimes Against Minors Registry;⁸
- The cost of an original, reissued, or renewed driver privilege card or permit is \$50. The cost for a typical driver's license is \$32;⁹ and
- The front of a driver privilege card or permit is identical to a driver's license or permit that is not REAL ID-compliant, and the back is identical to a limited-duration license, permit, or special identification card.

Eligibility

While both a driver's license or permit and a driver privilege card or permit authorize the holder to have many of the same privileges, the eligibility criteria for each are different.

An applicant for a driver's license or permit is required to show proof of his citizenship or immigration status to determine eligibility for a driver's license or permit. Previously, an applicant was required to show that he was a citizen, a legal permanent resident, or a conditional resident alien. The legislation expanded the list of applicants eligible for a driver's license or permit to include approved applicants for asylum, entrants in refugee status, and citizens of the Freely Associated States.¹⁰ An applicant for a driver privilege card or permit is not required to show any citizenship or immigration documentation. However, the applicant must meet two requirements that are not asked of applicants for driver's licenses or permits: the DMV must determine that the applicant (i) has reported income and deductions from Virginia sources or been claimed as a dependent on an individual income tax return filed with the Commonwealth in

⁶ See VA. CODE § 46.2-325.

⁷ VA. CODE § 46.2-330.

⁸ *Id.*

⁹ VA. CODE §§ 46.2-333.1 and 46.2-332.

¹⁰ The Federated States of Micronesia, the Republic of Palau, and the Republic of the Marshall Islands make up the Freely Associated States.



the preceding 12 months and (ii) is compliant with the Virginia laws regarding motor vehicle insurance.¹¹

Any driver who, while registering his motor vehicle, declares that he has complied with the laws regarding motor vehicle insurance or uninsured motor vehicle registration is subject to verification of this declaration by the DMV.¹² Failure to verify compliance when requested by the DMV can result in the suspension of any driver's license and registration certificate or license plate issued to the owner of the motor vehicle.¹³ However, the DMV does not determine compliance with the motor vehicle insurance requirements prior to issuing a driver's license or permit to an applicant. Additionally, there is no income tax return requirement for applicants for a driver's license or permit.

Term "Driver's License"

The Code contains various references to driver's licenses, permits, and special identification cards. They are typically referenced as a means of confirming identity or other essential information. The legislation updated existing Code provisions regarding driver's licenses to clarify whether the Code provisions apply only to driver's licenses or also include driver privilege cards and permits. For example, the provisions regarding voter registration through the DMV only apply to holders of driver's licenses and not to holders of driver privilege cards. However, the provisions that allow a driver's license to be used as proof of age also allow for the use of a driver privilege card for that purpose.

The legislation uses the phrase "a driver's license or other document issued under Chapter 3 (§ 46.2-300 et seq.) of Title 46.2 or the comparable law of another jurisdiction . . ." to refer to any license, permit, or identification document issued by the DMV. In addition to driver's licenses and driver privilege cards, this phrase includes special identification cards, special identification cards without a photograph, limited-duration driver's licenses, learner's permits, motorcycle permits, and commercial driver's licenses and permits. Some Code provisions that only reference driver's licenses may still also include driver privilege cards and other credentials issued by the DMV because the title in which the provision is located defines "driver's license" to include any document issued by the DMV that authorizes the operation of a motor vehicle.¹⁴

REAL ID Act Compliance

Beginning on October 1, 2021, the federal REAL ID Act requires that any person boarding a domestic flight or entering a secure federal facility present a federally approved form of identification or a REAL ID-compliant state-issued credential.¹⁵ To obtain a REAL ID-compliant state-issued credential, the applicant must provide proof of legal presence. In Virginia, residents have the option to obtain a REAL ID-compliant driver's license or special identification card or a standard driver's license or special identification card.¹⁶ Standard credentials display the language "Federal Limits Apply" and REAL ID-compliant credentials display a star in a black circle on the front of the card. As directed by the legislation, driver privilege cards are identical

¹¹ See VA. CODE ARTICLE 8 (§ 46.2-705 ET SEQ.) OF CHAPTER 6 OF TITLE 46.2.

¹² VA. CODE § 46.2-706.

¹³ *Id.*

¹⁴ See VA. CODE § 46.2-100.

¹⁵ REAL ID Act of 2005, H.R. 418, 109th Cong.

¹⁶ Federal law allows states to require that state-issued credentials be REAL ID-compliant or allow residents to choose between a REAL ID-compliant or standard credential. More information about the Virginia approach can be found at www.dmv.virginia.gov/drivers/#real_id.asp.



in appearance to standard driver's licenses. No driver privilege card is eligible to be a REAL ID-compliant credential.

Limited-Duration Documents

The legislation changes the name of temporary licenses, permits, and special identification cards to limited-duration licenses, permits, and special identification cards. Prior to the legislation, applicants who did not meet the citizenship or immigration status requirements for a driver's license but were legally present in the United States based on obtaining one of the immigration statuses listed in the Code were eligible for a temporary license, permit, or special identification card.¹⁷ However, not all immigration statuses that would allow an applicant to be legally present in the United States were listed in the Code. The legislation expands eligibility for a limited-duration document to include all applicants with valid evidence that a federal court or federal agency having jurisdiction over immigration has authorized the applicant to be in the United States.

The legislation only changes the name of and eligibility for a limited-duration document. Current law provides that a limited-duration document may be valid for the duration of the applicant's authorized stay in the United States.¹⁸ However, a limited-duration document may not be issued for an applicant whose authorized stay ends less than 30 days from the date of application, and if there is no definite end date, the limited-duration document will be valid for one year.¹⁹

Data Privacy

There have been reports of states sharing Department of Motor Vehicles customer data with the federal government for the purpose of identifying the citizenship status of the applicants.²⁰ In response, the legislation includes a prohibition on releasing any driver privilege card or permit applications, proof documents provided to obtain a driver privilege card or permit, or data regarding what type of proof document was provided. The legislation allows for release of information related to the issuance of a driver privilege card or permit to governmental entities that need the information to carry out a lawfully established official function. However, the legislation requires the DMV to deny a request for information related to the issuance of a driver privilege card or permit by a governmental entity if the requestor is not able to provide the DMV with sufficient authority to show that the purpose for which the information is to be used is one of the requestor's official functions.

For more information, contact the Division of Legislative Services staff:

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¹⁷ See *supra* note 2.

¹⁸ VA. CODE § 46.2-328.1.

¹⁹ *Id.*

²⁰ Hansi Lo Wang, *Four States Are Sharing Driver's License Info To Help Find Out Who's A Citizen*, National Public Radio (July 14, 2020), <https://www.npr.org/2020/07/14/890798378/south-dakota-is-sharing-drivers-license-info-to-help-find-out-who-s-a-citizen>.

