

**SECTION 401.
DRIVERS LICENSE AND VEHICLE REGISTRATION APPLICANTS; LAWFUL
PRESENCE REQUIREMENT. ¹**

IRLI Comment: The terminology of state driver licensing laws varies greatly from state to state, making the drafting of a universal model for state use not practical. However, most states require that an applicant for a license be a “resident” of the state. Section 401 simply excludes persons who are not lawfully present in the United States from the definition of “resident.” This exclusion is consistent with federal immigration law. The U.S. Supreme Court has held that aliens who are prohibited by federal law from entering the United States, or if lawfully admitted to this country, prohibited as a condition of admission from abandoning a prior domicile in their own country, operate under a legal disability that prohibits them from qualifying as a legal resident of a state for licensing purposes.

Most states currently require evidence that a license applicant is not an illegal alien. Section 401 requires that the state use the federal SAVE system to verify that a non-citizen applicant is not an ineligible alien. Use of the SAVE system is a required element of compliance with the REAL ID.

Section [xx-xx-xxx] is amended to read as follows:

“Sec. [xxx]. "Nonresident" means every person who is not a resident of this state. A person, other than a citizen or national of the United States, or an alien lawfully admitted for permanent residence, shall be deemed to be a nonresident for purposes of this chapter, unless and until the Department of Motor Vehicles has verified that such person is lawfully present in the United States through the SAVE program.

¹ Source: IRLI.