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Ignorance of International Law Is No Excuse, or How the Florida Legislature Ticked Off Canada[†]

PATRICIA MORGAN^{*}, LOREN TURNER^{**}, AND EDWARD T. HART^{***}

During its 2012 session the Florida Legislature amended the text of the Florida Statutes which lists exemptions from the requirements of obtaining a Florida drivers' license. Removed from the text of Florida Statute 322.04 was the line concerning nonresidents, both fellow Americans and international visitors, "who has in his or her immediate possession a valid noncommercial driver's license issued to the nonresident in his or her home state or *country* [emphasis added]." Inserted was a new line, "An International Driving Permit issued in his or her name in his or her country of residence and a valid license issued in that country." International visitors were required to have in their possession not only a valid drivers' license, but also an International Driving Permit (IDP) that translated into English the personal identification information of the driver. The change took effect January 1, 2013, but even before that date, Florida faced allegations that it was violating international law with this new requirement.

Protests quickly arose from those representing foreign drivers. The Canadian Automobile Association (CAA), representing hundreds of thousands of Canadians who annually visit the Sunshine State, warned its members of this new requirement. The CAA wrote an open letter to Florida Governor Rick Scott in which they point out for decades millions of Canadians have driven to Florida "with no known problems associated with law enforcement being unable to understand their drivers' licenses. We would argue that [Florida] state law enforcement officials, due to the sheer

[†] © Patricia Morgan, Loren Turner, Edward T. Hart, 2013.

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number of Canadians in your state, are quite familiar with Canadian drivers' licenses."¹

Within a matter of days of the new language coming into effect, the Florida Department of Highway Safety and Motor Vehicles announced that Florida Highway Patrol would not enforce the revised statute.² Representative Ben Albritton, sponsor of the bill that amended the statute, admitted 'he made a doozy of a mistake.'³ His apology was picked up by the *Toronto Star*, which also quoted Kristen Olsen-Doolan, spokesman for the Florida Department Highway Safety and Motor Vehicles as saying, "In a state that has a problem with people not wanting to get drivers' license at all, it's just fabulous to have a group [CAA] really concerned about doing the right thing."⁴

So how did Florida find itself in this state of affairs alienating millions of foreign visitors? In this article, we will consider the Geneva Convention on Road Traffic of 1949 and its impact on national sub-units, such as the states that make up the United States, who promulgate their own driving regulations. Linked to this, we will review the enforcement and interpretation of the Convention by authorities in the United States before Florida altered its statutes. We will then look at the history of the Florida statute, which has in prior years touched on the driving rights of non-residents but had never before been alleged to contravene international law. We will conclude telling how Florida worked its way out of this self-inflicted conflict and by considering any lessons that can be learned when local entities adopt laws without full consideration of international law.

¹ Letter from Tim Shearman, President, Canadian Automobile Association, to Rick Scott, Governor, State of Florida (Feb. 20, 2013) available at <http://www.caa.ca/governor-of-florida-a-letter-asking-to-amend-idp/>

² Statement from DHSMV on International Driving Permits.

³ Tampa Bay Times "Don't Snub the Snowbirds." www.tampabay.com/opinion/editorials/dont-snub-the-snowbirds/1275400 . See also Tampa Bay Times <http://www.tampabay.com/news/humaninterest/angst-from-canadians-prompts-drivers-license-change/1275293> .

⁴ See also Toronto Stat at http://www.thestar.com/news/gta/2013/02/15/florida_travel_politician_responsible_for_licence_law_debacle_apologizes.print.html

International Law Governing Local Laws for Driving Licenses

Motor vehicle drivers in the State of Florida must maintain a Florida driver's license.⁵ However, in certain circumstances, nonresident drivers are exempt from this general rule.⁶ Prior to the 2012 legislative session, Sections 322.04(c) and (d) of the Florida Statutes exempted nonresidents (of at least 16 years or older) from obtaining a Florida driver's license if they maintained a driver's license from their home state or country.⁷ However, in the 2012 legislative session, Governor Rick Scott, signed a bill into law that narrowed the circumstances under which nonresidents – and in particular international visitors – were exempt.⁸ The bill, which responded to concerns from law enforcement officials who encountered foreign driver's licenses written in non-English languages,⁹ required nonresident international drivers to produce both a valid license from their home country *and* an international driving permit.¹⁰ Without both documents, nonresident international drivers were not exempt from maintaining a Florida driver's license and, therefore, were not permitted to operate a motor vehicle in Florida.¹¹

The Florida legislature did not anticipate the effect of the new law on tourism to Florida. Under the new law, foreign-issued driver's licenses were not sufficient to legally drive in Florida. Foreign drivers also required an international driving permit, a document many foreign visitors did not know how to obtain.¹²

On February 14, 2013, the Florida Department of Highway Safety and Motor Vehicles, in response to the international community, issued a press release stating that law enforcement officials would not enforce Section

⁵ FLA. STAT. § 322.03 (2012).

⁶ FLA. STAT. § 322.04 (2012).

⁷ FLA. STAT. § 322.04 (2011).

⁸ Fla. Legis., Final Legislative Bill Information, 2012 Reg. Sess., HB 1223, available at: <http://flsenate.gov/Session/Bill/2012/1223>.

⁹ Sara K. Clarke, *Rules on International Driving Permits Cause Unintended Consequences for Florida Tourism*, ORLANDO SENTINEL (February 15, 2013), available at: http://articles.orlandosentinel.com/2013-02-15/news/os-international-driving-permit-orlando-20130215_1_international-visitors-law-enforcement-unintended-consequences

¹⁰ FLA. STAT. § 322.04(c)(2) (2012).

¹¹ *Id.*

¹² Michael Pollick & Justine Griffin, *Canadian Fear Insurance Implications of State's New Driving Rule*, HERALD-TRIBUNE (February 14, 2013), available at: <http://www.heraldtribune.com/article/20130215/ARTICLE/130219675>.

322.04(c)(2).¹³ The press release explained that “the law may potentially conflict with an international treaty,” although it doesn’t name a particular one.¹⁴ This statement succeeded in provoking the Florida legislature to change the law back. The first session law of the 2013 regular legislative session approved Florida House Bill 7059, which removed “the requirement that a nonresident out-of-country visitor carry a valid International Driving Permit (IDP) in order to drive lawfully in Florida...and brings § 322.04, F.S., back to its pre-2012 regular legislative session form.”¹⁵

But, a question still remains: did the former Section 322.04(c)(2) violate international law?

Article II, section 2 of the United States Constitution grants the executive branch power to enter into a treaty with a foreign state(s).¹⁶ However, for a treaty to be legally binding and enforceable in U.S. courts, the treaty must also be ratified by two-thirds majority of the Senate.¹⁷ Once the treaty is ratified by two-thirds vote, it becomes the “supreme law of the land”¹⁸ and trumps in conflicts between its provisions and provisions of state law.¹⁹

The United States is a party to two multilateral treaties regarding noncommercial motor vehicle traffic: (1) the Convention on the Regulation of Inter-American Automotive Traffic (hereinafter “the Inter-American Convention”),²⁰ which regulates traffic within North, Central, and South

¹³ Press Release, Florida Department of Highway Safety and Motor Vehicles, Florida’s Doors and Roadways Remain Open to Visitors: Highway Safety Agency Reassures Visitors that Travel to the Sunshine State is Business as Usual (Feb. 14, 2013) available at: <http://www.flhsmv.gov/news/pdfs/PR021413.pdf>.

¹⁴ *Id.*

¹⁵ Fla. Legis., Final Bill Analysis, 2013 Reg. Sess., available at: <http://flsenate.gov/Session/Bill/2013/7059/Analyses/A9VKVNwtmFx29tufAAwq1RmtAE=%7C14/Public/Bills/7000-7099/7059/Analysis/h7059z.EAC.PDF>

¹⁶ U.S. Const. art. II, § 2.

¹⁷ *Id.*

¹⁸ U.S. Const. art. VI, cl. 2.

¹⁹ *Ware v. Hylton*, 3 U.S. 199 (1796). See also Julian G. Ku, *Treaties as Laws: a Defense of the Last-in-Time Rule for Treaties and Federal Statutes*, 80 INDIANA L.J. 319 (2005) (explaining the rule governing conflicts between treaty provisions and federal statutes).

²⁰ Convention on the Regulation of Inter-American Automotive Traffic, *opened for signature* Dec. 15, 1943, 61 Stat. 1129 (entered into force for the U.S. Oct. 29, 1946) [hereinafter *The Inter-American Convention*].

America, and (2) the Geneva Convention on Road Traffic, which regulates traffic globally (hereinafter “the Geneva Convention”).²¹ Both treaties set out to facilitate international travel while recognizing each State’s exclusive jurisdiction over the traffic within its borders.²²

Article VII of the Inter-American Convention provides: “evidence of compliance with the conditions of this Convention shall entitle motor vehicles and motor vehicle operators to circulate on the highways of any of the Contracting States.”²³ Article VI of the Inter-American Convention sets forth one of those conditions. It states: “every motor vehicle operator before admission to international traffic shall have such driving license as may be required by the laws of his State or such as may be issued by any political subdivision thereof having legal authority to issue driving licenses. *In the event that no such driving license is required by his State or any political subdivision thereof, a special international driving license... shall be valid...*”²⁴ *emphasis added*. Article XIII continues: “a special international driving license may be required for each operator admitted to circulation in any individual State party to this Convention, if the State so elects. Such a special license shall be required for each operator who does not possess a domestic driving license as required in Article VI...”²⁵ In other words, a motor vehicle driver must have a driver’s license from his/her own State or appropriate political subdivision, or, in the absence of that domestic license, an international driving license. However, the Inter-American Convention explicitly permits States to require a “special international driving license” in addition to a foreign domestic license, “if the State so elects.”

The Geneva Convention is equally permissive. Article 24 of the Geneva Convention states: “(1) Each Contracting State shall allow any driver admitted to its territory who fulfills the conditions which are set out in annex 8 [age requirement] and who holds a valid driving permit issued to him, after he has given proof of his competence, by the competent authority of another Contracting State or sub-division thereof...to drive on its roads without further examination...(2) A Contracting State *may* however require that any driver admitted to its territory shall carry an international driving permit

²¹ Convention on Road Traffic, Sept. 19, 1949, 125 UNTS 22 (entered into force Mar. 26, 1952) [hereinafter *The Geneva Convention*].

²² See *The Inter-American Convention*, *supra* note 10, at 1130; see also *The Geneva Convention*, *supra* note 11, at 3 UST 3008.

²³ *The Inter-American Convention*, *supra* note 16, at 1134.

²⁴ *Id.* at 1132.

²⁵ *Id.* at 1144.

conforming to the model contained in annex 10, especially in the case of a driver coming from a country where a domestic driving permit is not required or where the domestic permit issued to him does not conform to the model contained in annex 9...²⁶ *emphasis added.*

The language of the Geneva Convention very closely models the language of the Inter-American Convention, which makes sense since the Geneva Convention replaces the Inter-American Convention for those nations that ratified both treaties.²⁷ Under the Geneva Convention, a motor vehicle driver must have a driver's license ("permit") from his/her own State or appropriate political subdivision, or, in the absence of that domestic license, an international driving license. However, the Geneva Convention also allows States the power to require additional proof of driving competency, in the form of an "international driving permit."

The United States "make it easier for American motorist to take their cars into foreign countries by providing for the reciprocal recognition of ... drivers permits."²⁸

Prior to Florida addressing this issue, the licensing requirements of international visitors has been discussed in other states as well as Federal courts. In 1979, Wisconsin Attorney General Bronson C. La Follette issued an opinion on a closely related topic.²⁹ The Wisconsin Secretary of the Department of Transportation asked whether the state can require a person to be able to speak and read the English language as a condition whether the use of an international driving permit could be required. Such a requirement was set out in 343.05(2)(d) of the Wisconsin statutes. Similar to what is laid out above in this section, Attorney General La Follette cites the supremacy clause of the U.S. Constitution³⁰ and by the ratification of both the Inter-American Convention and the Geneva Convention.

Since neither Convention required foreign drivers to have knowledge of the local language, the state of Wisconsin was preempted from adding such a requirement to its statutes.³¹ La Follette points out that as long as the

²⁶ The Geneva Convention, *supra* note 11, at 125 UNTS 38, 40.

²⁷ The Geneva Convention, *supra* note 17, art. 30 at 125 UNTS 44.

²⁸ Senate Foreign Relations Committee Executive Rep. No. 10, 81st Cong. 2d Sess. 30 (1950).

²⁹ Wis. Op. Atty. Gen. No. 88-79

³⁰ Art. VI, cl. 2.

³¹ Wis. Op. Atty Gen No. 88-79, p.4.

foreign driver's license conforms to the form, size, and listed information as set out in Annex 9 of the Geneva Convention it shall be considered valid.³² While parties of the convention, can require International Driver Permits as described in Annex 10 of the convention, these are really for cases where drivers are coming from countries where drivers licenses are not required or the issued driver's license does not conform to the model laid out in Annex 9.

More recently in 2008, the Tennessee Attorney General's office issued an opinion that answered two questions submitted by a district attorney general. First, "does Tennessee recognize international driver licenses?" Second, what are the criteria for a valid international driver license?"³³ The very succinct language of the opinion stated, that there was no such instrument as an "international driver license," and that Tennessee recognizes driver licenses issued by other countries. Tenn. Code Ann. Sec 55-50-304 allows people may legally drive using their valid license issued by another country.

The International Driver Permit is not required under any Tennessee statute. Since the International Driver Permit is an internationally standardized translation and verification of license validity, it can be used by law enforcement as an aid to determine a person's identity and the validity of their foreign-issued license. However, an International Driver Permit is neither required to drive legally in this State nor serves as a valid substitute for a license issued by this State or any other state or country.³⁴

Case law that considers the effect of the Geneva Convention and foreign drivers' licenses on domestic law has been very limited. Only one Federal District Court case, *Eskew v. Young*,³⁵ can be found which discusses the obligations of the United States under the convention and the treatment of foreign drivers licenses. It is worth noting that Judge Stiehl found that "[n]either the Supreme Court, the courts of appeals, nor the trial courts of Wyoming and Nevada have had occasion to analyze a case under the Convention on Road Traffic."³⁶ The case was a tort action by Laina Eskew who was injured in an accident caused by Brian Young, a visitor from England. Young pulled out in front of the oncoming car in which Laina

³² *Ibid*, p. 1.

³³ Tenn. Op. Atty. Gen. No 08-25 (February 13, 2008)

³⁴ *Id.* at 2-3

³⁵ *Eskew v. Young*, 992 F.SUPP 1049 (S.D. Ill. 1998)

³⁶ *Id.* at 1052.

Eskew was riding after he misinterpreted the flashing headlights of the car in which Eskew was a passenger. In England flashing headlights was a signal of another car giving way. The rental agency who rented the recreational vehicle to Young and his friend did so based on their valid driver's licenses from their home country. Eskew alleged that the rental car was negligent as the company "should have known [the international driver] would drive negligently by virtue of the fact that he was a foreigner who was unfamiliar with the customs of driving in the United States."³⁷

In granting a motion for summary filed by the rental car agency, Judge Stiehl held that under the Convention, the agency was proper in its conduct renting the vehicle to the English visitor upon verification of his license. As a matter of law, the company had no duty to further examine Young before renting him a vehicle.

Given the language of the two multi-lateral treaties discussed above, it is clear that the treaties were intended to require party-States to recognize the foreign licenses of other party-States, but were not intended to prevent party-States from requiring additional proof of driving competency. It could be argued that Florida did not violate international law by requiring foreign drivers to obtain an international driving license in addition to a valid license issued by a foreign State. However, given the economic implications of the law, in particular the outcry from international visitors to Florida, the requirement of International Driver Permits was an embarrassment that needed to be addressed.

Florida Statute 322.04, Persons Exempt from Obtaining Driver License

Turning to Section 322.04 of the Florida Statutes has been in the news during the past year.³⁸ The Florida Legislature amended the provision related to nonresidents adding a requirement that the driver have an International Driving Permit in addition to their valid driver's license.³⁹ A review of the legislative history and public comments of those involved in the 2012 revision

³⁷ Id. at 1053.

³⁸ Michael Turnbull, *Florida's New License Requirement Driving Canadians Crazy*, SUN SENTINEL, Feb. 15, 2013, http://articles.sun-sentinel.com/2013-02-15/news/fl-canadian-driver-license-20130214_1_canadians-driver-licenses-new-license-requirement; Toluse Olorunnipa, *Florida U-Turns on International Driver's Permit Requirement*, MIAMI HERALD, Apr. 2, 2013.

³⁹ 2012 Fla. Laws 2380.

suggest that any consideration was given to the international aspects of this change.

Section 322.04 has been amended many times over the years. The changes often appear to be based on policy issues and the political climate of the day. The statute first appeared in the Florida Statutes in 1939.⁴⁰ The statute was entitled: "What Persons are Exempt from License." It outlined the conditions under which individuals (non-commercial drivers) were not required to obtain a driver license in the state of Florida. Subsection 3 of the 1939 version of the statute reads:

A nonresident who is at least 16 years of age and who has in his immediate possession a valid operator's license issued to him in his home state or country may operate a motor vehicle in this state only as an operator;⁴¹

Foreign driver's licenses were afforded full faith and credit as those from the other states. The title of the section changed in 1941, but no substantive changes were made at that time.⁴²

The first substantive change to the statute and the subsection related to nonresident drivers occurred in 1943.⁴³ A new subsection, subsection (5), was added to the statute which states:

The provisions of this section shall not apply to any nonresident who shall accept employment, or engage in any trade, profession or occupation in this State, or shall enter his children to be educated in the public schools of the State of Florida, but in such case or cases such nonresident shall be required to obtain a drivers' license in the same manner as is required of residents of the State of Florida before such nonresidents shall be permitted to operate any motor vehicle on the highways of the State of Florida.⁴⁴

This added subsection seems to be an acknowledgement of the growing population of the state, particularly given that it was wartime and many people were arriving in Florida. During World War II in the 1940s, Florida underwent a notable population increase as military bases were established

⁴⁰ 1939 Fla. Laws 1276.

⁴¹ *Id.* at 1283.

⁴² 1941 Fla. Laws 762.

⁴³ 1943, Fla. Laws 538.

⁴⁴ *Id.* at 539.

and grew⁴⁵. The state's population grew 46.1% during the 1940s, as both military personnel and civilians flocked to the state from around the country.⁴⁶

No additional changes were made to this portion of the statute until 1955. The changes at that time were insignificant to the section at the center of this article.⁴⁷

In 1959, additional language was added to subsection (5) of 322.04 to include a fuller description related to children of nonresidents. This may have been an extension of the 1943 change as children of those nonresidents would have been coming of age. Subsection (5) was amended to read:

The provisions of this section shall not apply to any nonresident who shall accept employment, or shall enter his children to be educated in the public schools of the state, or a child of such nonresident who is at least sixteen (16) years of age, but in such case or cases such nonresident or child of the nonresident shall be required to obtain a driver's license in the same manner as is required of residents of the state before such nonresidents or children shall be permitted to operate any motor vehicle on the highways of the state.⁴⁸

The next changes occurred two years later in 1961 when subsection (6) was added to the statute. This new subsection added to the listed exemptions, employees of the United States government.⁴⁹ This was during the height of the Cold War and of particular interest in Florida due to the Cuban Revolution that took place in 1959. The tension between the Soviet Union and the United States focused attention on Florida due to its proximity to Cuba. Cape Canaveral (home of many space launches) is located in Florida, and this period of time saw the inception of the "space race."⁵⁰ Many United States government employees and contractors entered the state at this

⁴⁵ David J. Coles, *Keep the Home Fires Burning Florida's World War II Experience*, in THE FLORIDA HANDBOOK 428 (Allen Morris and Joan Perry Morris, 27th Biennial Edition, 1999-2000).

⁴⁶ *Id.* at 428.

⁴⁷ 1955 Fla. Laws 224.

⁴⁸ 1959 Fla. Laws 1171.

⁴⁹ 1961 Fla. Laws 214.

⁵⁰ THE SPACE RACE, <http://www.history.com/topics/space-race> (last visited July 11, 2013).

time, and provisions were needed to accommodate the new residents. Notably, this is the first time there is recognition of short term residency in the state. The new subsection read:

Any person working for firms under contract to the United States government, whose residence is without the state of Florida and whose main point of employment is without the state of Florida may drive a vehicle on the public roads of Florida for periods of up to sixty (60) days while in this state on temporary duty, provided that such person have a valid driver's license from the state of such person's residence.⁵¹

The next change was made in 1969.⁵² The change to subsection (5) added language related to migrant workers, who had previously not been specifically mentioned.

The provisions of this section shall not apply to any nonresident, except nonresident migrant farm workers as defined in section 317.9931(1), who shall accept employment, or shall enter his children to be educated in the public schools of this state, or a child of such nonresident who is at least 16 years of age, but in such case or cases such nonresident, except nonresident migrant farm workers as heretofore defined, or child or the nonresident shall be required to obtain a driver's license in the same manner as is required of residents of the state before such nonresidents or children shall be permitted to operate any motor vehicle on the highways of the state.⁵³

The change reflects the awareness of the times related to the plight of migrant workers.⁵⁴

Clarification was provided in 1979, when the "persons exempt" section removed language and referred the exemption back to the definitions section of 322.031 "Nonresident; when license required" to merely state that

⁵¹ National Park Service, U.S. Department of the Interior, *Cold War in South Florida Historic Resource Study* (Steve Hach 2004), available at http://www.nps.gov/history/history/online_books/coldwar/florida.pdf at page 18

⁵² 1969 Fla. Laws 763.

⁵³ *Id.*

⁵⁴ Elizabeth J. du Fresne and John J. McDonnell, *The Migrant Labor Camps: Enclaves of Isolation in our Midst*, 40 *FORDHAM L. REV.* 279 (1971), available at <http://ir.lawnet.fordham.edu/flr/vol40/iss2/3>.

the provisions do not apply to those to whom 322.031 applies. In 1984, Chapter 84-111 added an exemption for those driving golf carts...super cute. 1987 saw changes that merely updated statute numbers.

Legislation adopted in 1989 amended the section by adding language specifying “noncommercial driver’s license” and the applicable classes of licenses.⁵⁵ Similarly, in 1991, language was added via Chapter 91-243 of the Laws of Florida specifying that the employee of the United States Government is exempt “while operating a ‘noncommercial’ motor vehicle owned by or leased to the United States Government and being used for official business.” The same standard applied for those working under contract. They were made exempt while driving a noncommercial vehicle.

In 1995, two amendments were made. The changes pursuant to Chapter 95-148 were the addition of gender neutral language.⁵⁶ The changes made by Chapter 95-333 removed a statement regarding the need for a valid Class D Florida driver’s license for those accepting employment as a chauffeur from a Florida resident.⁵⁷ This last change left the statute in the form addressed by Florida’s 2012 legislature. At that time, the statute read (in part):

322.04 Persons exempt from obtaining driver’s license –

(1) The following persons are exempt from obtaining a driver’s license:

(d) A nonresident who is at least 18 years of age and who has in his immediate possession a valid noncommercial driver’s license issued to him in his home state or country may operate a motor vehicle, other than a commercial motor vehicle in this state.⁵⁸

Then in 2012 came the significant change about which much controversy arose. The changes, memorialized in Chapter 2012-181 are:

⁵⁵ 1989 Fla. Laws Chapter 89-282

⁵⁶ 1995 Fla. Laws 1158.

⁵⁷ 1995 Fla. Laws 2962.

⁵⁸ FLA. STAT. § 322.04(1)(d)(1995).

322.04 Persons exempt from obtaining driver driver's license

(1) The following persons are exempt from obtaining a driver driver's license:

(c) A nonresident who is at least 16 years of age operating ~~and who has in his or her immediate possession a valid noncommercial driver's license issued to the nonresident in his or her home state or country may operate~~ a motor vehicle of the type for which a Class E driver driver's license is require in this state if the nonresident has in his or her immediate possession:

1. A valid noncommercial driver license issued in his or her name from another state or territory of the United States; or

2. An International Driving Permit issued in his or her name in his or her country of residence and a valid license issued in that country.⁵⁹

While this revision was being debated during the session, the legislature (as is its custom) was provided a Staff Analysis. Staff Analysis is prepared by the professional staff of the legislature committees. It is a written report submitted to the legislative committees considering a bill. The report can be comprehensive which sums up the propose change, describes the present situation, lists the effect of the change, alerts on fiscal impact, and raise red flags about possible conflicts. Included in this analysis is an explanation of the changes made regarding nonresident drivers and International Driving Permits. The Analysis states, in part:

Language of Analysis:

Effect of Changes

The bill revises s. 322.04, F.S., to permit nonresidents who are at least 16 years of age to use an International Driving Permit (IDP) issued by the person's country of residence to operate a motor vehicle of the type for which a Class E driver's license is required. The person must be in immediate

⁵⁹ 2012 Fla. Laws 37.

possession of either of the following: a valid non-commercial driver's license issued in his or her name from another state or territory of the United States; or an IDP issued in his or her name in his or her country of residence and a valid license issued in that country.

The bill eliminates the provision relating to nonresidents who are at least 18 years of age and who have valid non-commercial driver's licenses issued in their home state or country. The effect of the change will subject these persons to the same guidelines for nonresidents 16 years of age and older.⁶⁰

The Transportation and Highway Safety Subcommittee, Transportation and Economic Development Appropriations Subcommittee, and Economic Affairs Committee each received an analysis of the Bill (House Bill 1223).⁶¹ Both analyses described the change being made to Florida Statute 322.04 as shown above.⁶² The characterization of the change was that it was merely making the provisions that applied to those over 18 and those for individuals 16 and older the same. *No reference to the Geneva Convention was made.*

As described above, when the Department of Highway Safety and Motor Vehicles' General Counsel reviewed the change to the statute, it discovered a potential conflict with the Geneva Convention on Road Traffic, to which the United States is a signatory. In a statement from the General Counsel's Office dated February 25, 2013, Deputy General Counsel Michael J. Alderman presented the question as to whether the new requirement for foreign residents to have an International Driving Permit (IDP) in addition to

⁶⁰ House of Representatives Final Bill Analysis, CS/CS/HB 1223 (Fla. 2012), available at <http://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?FileName=h1223z1.THSS.DOCX&DocumentType=Analysis&BillNumber=1223&Session=2012>.

⁶¹ CS/CS/HB 1223 Highway Safety and Motor Vehicles (Fla. 2012) <http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=48489>. In contrast, see CS/HB 503 Preservation and Protection of the Right to Keep and Bear Arms in Motor vehicles Act of 2008 (Fla. 2008), <http://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?FileName=h0503a.ENRC.doc&DocumentType=Analysis&BillNumber=0503&Session=2008> as example where the staff warned legislatures of possible conflict between the bill and existing law.

⁶² *Id.*

their valid driver's license from their country of residence was in conflict with any treaties to which the United States is a party.⁶³ Counsel Alderman concluded that the revision to the statute may be a violation under the Convention on Road Traffic (1949) and that enforcement of the new provision would, therefore, be deferred.⁶⁴

This perceived error and change in policy became an oft-reported item in the press.

Because Florida is such a popular tourist destination, especially for foreign visitors, the change received a great deal of attention on tourist blogs and information websites.⁶⁵ Many visitors are from Canada and the U.K. and had never encountered such a requirement before. Some have reported that a primary issue that prompted the change was the proliferation of driver's licenses in foreign languages and the difficulty authorities had in determining whether such licenses were valid in the event of a traffic stop, etc. This being one of the purported bases for the change led to additional controversy for visitors with foreign licenses that are printed in English.

The representative who introduced the bill, Ben Albritton, recognized that the revision went further than he intended. He released a letter of apology sent to Louis Leger, Canadian consul general in Miami, Florida. Albritton wanted Canadian officials to know that the Florida Legislature would take up a measure to revert back to the pre-2012 language in the statute. Albritton stated:

I would like to take this opportunity to reiterate that it was never my intent to disenfranchise any Canadian visitors to our state or to discourage tourism in the state of Florida. We value our international visitors, especially our Canadian friends, and look forward to continuing to welcome all visitors to our great state. I am proud to provide a solution to the concerns raised by last year's legislation that ensures Florida's

⁶³ Requirement for International Driving Permit, Section 322.04, Florida Statutes, Docket Number 2013-0007611 (Feb. 25, 2013) *available at* <http://flhsmv.gov/IDP022513.pdf>.

⁶⁴ *Id.*

⁶⁵ *See, e.g.* "Statement from Florida Department of Highway Safety and Motor Vehicles (DHSMV) on International Driving Permits" *available at* <http://www.joyoftravel.ca/newsDetails.php?Statement-from-Florida-Department-of-Highway-Safety-and-Motor-Vehicles-DHSMV-on-International-Driving-Permits-137>.

roadways remain open as usual to all our visitors... I am immensely sorry for the inconvenience this may have caused to our Canadian friends.⁶⁶

Conclusion

So what was the fix? With the growing upheaval in January and February of 2013 caused as word spread about the revised statute, bills to amend the statute and return to the prior language were quickly filed for the 2013 legislature session. Bills were filed in both the House of Representatives and the Senate chambers of the Florida Legislature by March 8, 2013, a matter of days after the issue had arisen in international press. Representative Albritton was not a sponsor of either bill. Both bills were drafted to return to the pre-2012 text removing any mention of the need for an International Drivers Permit.⁶⁷ Both bills received bipartisan and unanimous support in both chambers and moved quickly through the legislative process. It would be interesting to learn how many other measures considered by the Florida Legislature have been approved by so many so quickly. In less than three weeks, an enacted bill was submitted to Governor Scott on March 28, 2013.

Notwithstanding how quick the bill was being moved through the legislative process, a Staff Analysis was prepared for each committee that considered its passage. In clear contrast to the year prior, the Staff Analysis this time around does reference the Geneva Convention on Road Traffic. Citing a legal opinion issued by the Florida Department of Highway Safety and Motor Vehicles, the legislative staff wrote the 2012 law “may also violate” the Convention.⁶⁸

Scott signed the bill on April 2, 2013 (in a public ceremony to which the representatives of CAA was invited. In a press statement titled “CAA Applauds Repeal of Florida IDP Law” pointed out that Canadians were not allowed to rent cars in Florida and that insurances companies could have used

⁶⁶Lloyd Dunkelberger, *Lawmaker Says He's Sorry in Letter to Canadian Diplomats*, Herald-Tribune (March 8, 2013), <http://politics.heraldtribune.com/2013/03/08/lawmaker-says-hes-sorry-in-letter-to-canadian-diplomats/>.

⁶⁷ HB 7509, 2013 Leg. (FL 2013) and SB 1766, 2013 Leg. (FL 2013)

⁶⁸ House of Representatives Final Bill Analysis, HB 7059 (Fla. 2013), <http://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?FileName=h7059z.EAC.DOCX&DocumentType=Analysis&BillNumber=7059&Session=2013>

the law as grounds for denying coverage.⁶⁹ The new session law was the first session law of the 2013 legislature and its application was retroactive to January 1, 2013.⁷⁰ Press coverage in of the bill signing took a more humorous view with articles entitled “Rick Scott Surrenders to Canada, Repeals International Driver’s License Law.”⁷¹

So what lessons about international law can be learned from this episode in Florida? Drafters of state laws, members of the legislature, their staff, and lobbyists, need to keep in mind that states are subject to international law that has been signed by the President and ratified by the Senate. In this case it was obvious, since International Drivers Permits were being expressly incorporated into Florida Statutes, that due diligence, if not on the part of the sponsoring representative, at least by the legislative staff members who review bills under consideration. Even a Google search would have alerted them of possible aspects under international law that they should investigate. At the very least the staff should have investigated and alerted legislatures how IDPs are governed.

This episode will become a classic example of how ignorance of international law can bring a national sub-unit into conflict with international law and cause an unnecessary burden on international relations. Other states in the American union, and their counterparts around the globe, need to be aware of their role, privileges and burdens, under international law. They should not without full awareness of the connections between nations, legislature laws that impact foreign visitors who visit them. Otherwise they might tick off the Canadians like Florida did.

⁶⁹ Kristine Simpson, *CAA Applauds Repeal of Florida IDP Law*, Canadian Automobile Association (April 2, 2013), <http://www.caa.ca/caa-applauds-repeal-of-florida-idp-law/>

⁷⁰ Fla. Laws 2013-01

⁷¹ Nick Wing, *Rick Scott Surrenders to Canada, Repeals International Driver’s License Law*, The Huffington Post (April 2, 2013, 5:31 p.m.), http://www.huffingtonpost.com/2013/04/02/rick-scott-drivers-license_n_3001553.html?utm_hp_ref=politics