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111TH CONGRESS, 1st Session | SENATE | REPORT 111–104

PROVIDING FOR ADDITIONAL SECURITY IN STATES' IDENTIFICATION ACT OF 2009

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 1261

TO REPEAL TITLE II OF THE REAL ID ACT OF 2005 AND AMEND TITLE II OF THE HOMELAND SECURITY ACT OF 2002 TO BETTER PROTECT THE SECURITY, CONFIDENTIALITY, AND INTEGRITY OF PERSONALLY IDENTIFIABLE INFORMATION COLLECTED BY STATES WHEN ISSUING DRIVER'S LICENSES AND IDENTIFICATION DOCUMENTS, AND FOR OTHER PURPOSES

DECEMBER 9, 2009.—Ordered to be printed

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DECEMBER 9, 2009.—Ordered to be printed

Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 1261]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1261) to repeal title II of the REAL ID Act of 2005 and amend title II of the Homeland Security Act of 2002 to better protect the security, confidentiality, and integrity of personally identifiable information collected by States when issuing driver's licenses and identification documents, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

The purpose of S. 1261 is to replace existing minimum standards for States' issuance of driver's licenses and identification cards that can be used as identification for certain federal official purposes in order to decrease the cost and increase the practicality of issuing secure identification. S. 1261 would replace Title II of the REAL ID Act of 2005 (P.L. 109–13) with new drivers license and identification card standards. It would also amend the Drivers Privacy Protection Act (P.L. 103–322) to set new conditions under which non-

governmental entities could read and use information stored on the machine-readable component of a driver's license or identification card.

II. Background and Need for the Legislation

The issuance of driver's licenses and State identification cards has long been left to the discretion of State and local governments. As a result, Americans face a patchwork of diverse policies governing who qualifies for a driver's license, how an individual proves his or her identity when applying for a license, and the physical appearance and construction of the card. Any coordination among the States has been done through voluntary efforts by the departments of motor vehicles (DMVs) themselves.

9/11 COMMISSION RECOMMENDATION

The need for federal intervention in the issuance protocols for State driver's licenses and identification cards was raised in 2004 by the National Commission on Terrorist Attacks Upon the United States (9/11 Commission), which recommended that the federal government set standards for the issuance of identification documents, such as driver's licenses. This recommendation was based on the finding that

> All but one of the 9/11 hijackers acquired some form of U.S. identification document, some by fraud. Acquisition of these forms of identification would have assisted them in boarding commercial flights, renting cars, and other necessary activities. . . . Fraud in identification documents is no longer just a problem of theft. At many entry points to vulnerable facilities, including gates for boarding aircraft, sources of identification are the last opportunity to ensure that people are who they say they are and to check whether they are terrorists.[1]

PREVIOUS LEGISLATIVE EFFORTS AT ESTABLISHING UNIFORM IDENTIFICATION STANDARDS

In response to the 9/11 Commission Report, Congress passed the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA; P.L. 108–458), which among other things, required the Secretary of Transportation, in consultation with the Secretary of Homeland Security, to issue regulations with respect to minimum standards for federal acceptance of driver's licenses and identification cards through a negotiated rulemaking among DOT and DHS representatives, State officials, and other interested parties. Under Section 7212 of IRTPA, no federal agency would be permitted to accept a State issued identification card unless it conformed to the minimum standards.

IRTPA directed its regulations to include minimum applicant documentation standards, procedures for document verification, requirements for the card contents, and standards for application processing.[2] It also mandated privacy protections for those who apply for and hold such identification.

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[1] 9/11 Commission Report, p. 390.
[2] Public Law 108–458, Section 7212 (Repealed).

The negotiated rulemaking committee had met only once before Congress passed the REAL ID Act of 2005 as part of the 2005 Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief (P.L. 109–13). The REAL ID Act repealed Section 7212 of IRTPA and replaced the negotiated rulemaking provision with a stricter set of federal requirements for the issuance of driver's licenses and identification cards.[3] The REAL ID Act was inserted into P.L. 109–13 during the House-Senate conference; the Senate did not independently consider or vote on the REAL ID Act as either a bill or an amendment to a bill. Moreover, neither the House nor the Senate held hearings on the REAL ID Act prior to its enactment.

Title II of the REAL ID Act of 2005 requires that, beginning on May 11, 2008, federal agencies may accept only State issued driver's licenses and identification cards that are compliant with the requirements of the Act as proof of identification for certain federal purposes, including—but not limited to—boarding an airplane, accessing a nuclear facility, or entering a federal building. Before issuing a compliant document, a state must verify the issuance, validity, and completeness of: (1) a photo identification document or a non-photo document containing both the individual's full legal name and date of birth; (2) the individual's date of birth; (3) the individual's social security number (SSN) or verification of the individual's ineligibility for a SSN; and (4) name and address of the individual's principle residence. In addition, the Act requires States to provide electronic access to the information contained in other States' driver's license databases.

The REAL ID Act also requires States to verify an applicant's legal status in the United States before issuing a compliant driver's license or identification card and adopt procedures and practices to: (1) employ technology to capture digital images of identity source documents; (2) retain paper copies of source documents for a minimum of seven years or images of source documents presented for a minimum of ten years; (3) take a picture of each applicant; (4) establish an effective procedure to confirm or verify a renewing applicant's information; (5) confirm with the Social Security Administration a SSN presented by a person using the full Social Security account number; (6) refuse issuance of a driver's license or identification card to a person holding a driver's license issued by another State without confirmation that the person is terminating or has terminated the driver's license; (7) ensure the physical security of locations where cards are produced and the security of document materials and papers from which driver's licenses and identification cards are produced; (8) subject all persons authorized to manufacture or produce driver's licenses and identification cards to appropriate security clearance requirements; (9) establish fraudulent document recognition training programs for appropriate employees engaged in the issuance of driver's licenses and identification cards; and (10) limit the length of time a driver's license or identification card is valid to eight years. The REAL ID Act did not require any protection of personally identifiable information.

A September 2006 report issued by the National Governors Association (NGA), the National Conference of State Legislatures

[3] Public Law 109–13, Division B—The REAL ID Act of 2005.

(NCSL), and the American Association of Motor Vehicle Administrators (AAMVA), based on a nation-wide survey of State DMVs, concluded that compliance with the REAL ID Act would cost States more than $11 billion over five years, would have a negative impact on DMV services, and would impose unrealistic burdens on States.[4]

On March 1, 2007, Department of Homeland Security (DHS) released a notice of proposed rulemaking (NPRM), which was published in the Federal Register on March 9, 2007.[5] The proposed rule sought to implement each of the REAL ID Act's mandates. The Office of Management and Budget (OMB) estimated that the proposed rule would cost States $14.6 billion over 10 years.

After receiving numerous comments on the NPRM, including concerns regarding cost, schedule, and lack of privacy protections, DHS issued a final rule implementing Title II of the REAL ID Act on January 29, 2008.[6] The final rule, which differed significantly from the NPRM, required that States use certain federal databases for verification purposes, set minimum standards for State motor vehicle databases, check with other States to determine if compliant identification had been issued in any other State, complete security plans, and physically secure identification issuance facilities. These regulations addressed some of the timing and cost concerns with REAL ID by offering a series of deadline extensions to States demonstrating progress in meeting REAL ID requirements and allowing a phased issuance of licenses and identification cards to different segments of the population. OMB estimated the cost of the final rule to States to be $3.9 billion over ten years.[7]

For all practical purposes, the final rule effectively disregards the law's May 11, 2008, deadline. Instead it used the waiver authority granted to the Secretary under REAL ID to put in its place a series of deadlines, each requiring States to demonstrate a certain level of compliance with REAL ID. First, States were allowed to request from DHS an extension until December 31, 2009, by submitting a written statement attesting to the State's intent to comply with REAL ID. However, in reality, a number of States were granted extensions based on a promise to improve driver's license security in general, as opposed to a specific commitment to comply with REAL ID. Second, the rule stated that States that could demonstrate "material compliance" with REAL ID by October 2009 would be granted an additional extension until May 10, 2011, to begin issuing fully compliant licenses. "Material compliance" is defined to mean meeting a series of 18 benchmarks laid out by DHS in the final rule. By May 11, 2011, all States must be compliant with REAL ID for the issuance of all new licenses. The regulations provide for a phased-in, risk-based issuance such that individuals born after December 1, 1964, be issued REAL-ID compliant driver's licenses by December 1, 2014, and that all license holders seeking compliant licenses have them by December 1, 2017.

If at any point a State does not meet one of the extension criteria, the full weight of the REAL ID Act takes effect, and no li-

[4] The Real ID Act: National Impact Analysis (September 2006).
[5] 72 Fed. Reg. 10820 (March 9, 2007).
[6] 73 Fed. Reg. 5272 (January 29, 2008).
[7] *See Id.* at p. 5272–5340.

censes issued by that State may be used to prove identity for federal purposes, including boarding a commercial airplane.

COMMITTEE CONSIDERS OPTIONS

The Committee (HSGAC), including its Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia (OGM), has held three hearings exploring the implementation of the REAL ID Act since that law's enactment. In addition, the Senate Judiciary Committee held a hearing on the REAL ID Act on May 8, 2007.

On March 26, 2007, the OGM Subcommittee held a hearing on the NPRM entitled, *Understanding the Realities of REAL ID: A Review of Efforts to Secure Drivers' Licenses and Identification Cards.*[8] Witnesses included Richard C. Barth, Assistant Secretary for Policy Development, DHS; Leticia Van de Putte, Texas State Senator representing NCSL; Mufi Hannemann, Mayor of Honolulu, Hawaii; David Quam, Director of Federal Relations, NGA; Timothy Sparapani, Legislative Counsel, American Civil Liberties Union (ACLU); and Jim Harper, Director for Information Policy Studies, CATO Institute.

On April 29, 2008, the OGM Subcommittee held a second hearing entitled *The Impact of Implementation: A Review of the REAL ID Act and the Western Hemisphere Travel Initiative.* This hearing examined the views of stakeholders on the final regulations, and explored the challenges that remained in implementation of REAL ID. The witnesses at that hearing were: Stewart A. Baker, Assistant Secretary for Policy, DHS; Derwood K. Staeben, Senior Advisor, Department of State; Donna Stone, President, NCSL; David Quam, Director of Federal Relations, NGA; Caroline Fredrickson, Director of the Washington Legislative Office, ACLU; Roger J. Dow, Chief Executive Officer, Travel Industry Association; Angelo I. Amador, Director of Immigration Policy, U.S. Chamber of Commerce; and Sophia Cope, Staff Attorney, Center for Democracy and Technology (CDT).

On July 15, 2009, the Committee held a hearing entitled *Identification Security: Reevaluating the Real ID Act,* which focused on the PASS ID Act. Witnesses included: Janet Napolitano, Secretary of Homeland Security; Jim Douglas, Governor of Vermont; Stewart A. Baker, former Assistant Secretary for Policy, DHS; Leroy D. Baca, Sheriff, Los Angeles County; David Quam, Director of Federal Relations, NGA; and Ari Schwartz, Vice President and Chief Operating Officer, Center for Democracy and Technology.

At these hearings, many witnesses called for repealing REAL ID and replacing it with more workable standards. Witnesses opposing REAL ID cited cost, time constraints, lack of the necessary federal electronic systems, refusal of multiple States to comply, and privacy concerns as reasons to contemplate a new proposal.

A number of states have passed resolutions denouncing the REAL ID Act. Furthermore, to date, fifteen States have enacted laws prohibiting compliance with REAL ID, and several others

[8] Senate Homeland Security and Governmental Affairs Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia Hearing on Understanding the Realities of REAL ID: A Review of Efforts to Secure Drivers' Licenses and Identification Cards (S. Hrg. 110–291), March 26, 2007.

have anti-REAL ID legislation pending.[9] Unless these States reverse the legislation, residents of these States will not have compliant identification required for official federal purposes. However, the legislatures in most States only meet every two years, meaning that if a State legislature did want to repeal existing anti-REAL ID laws there could be a significant time delay before they are able. The most urgent practical repercussion of this State rejection of REAL ID is that as of December 31 of this year, millions of Americans will not be able to use their State driver's license or identification card to board an airplane, unless the Secretary further exercises the waiver authority provided under the *REAL ID Act.* At a minimum, this will cause the Transportation Security Administration (TSA) to perform more extensive screening procedures, potentially including secondary screening, on the vast majority of passengers that travel through certain airports, greatly inconveniencing passengers and causing the air travel industry to lose revenue. The worst case scenario is that TSA simply cannot handle the additional screening burden and many of these individuals are unable to board commercial flights all together.

To address the concerns with REAL ID and avoid significant air travel disruptions at the end of this year, the PASS ID Act (S. 1261) was introduced by Senators Daniel Akaka, George Voinovich, Patrick Leahy, Jon Tester, Max Baucus, and Thomas Carper on June 15, 2009 to address these concerns while still ensuring a heightened level of security in drivers licenses and state-issued identification cards. The following sections discuss the major concerns with REAL ID identified in the Committee's hearings and how PASS ID would address those issues.

COST AND PRACTICALITY

States have repeatedly raised the REAL ID Act's high implementation costs as one of their primary concerns with the law. At OGM's 2007 hearing, David Quam, Director of Federal Relations at NGA, testified that the $11 billion in implementation costs, as estimated by NGA, NCSL and AAMVA, would have a major adverse effect on State-offered public services. According to Mr. Quam, many of the law's provisions would impose significant costs on the States, which would have to take on additional staff to compress their regular renewal cycles for issuing licenses; rework the physical processes for issuing licenses; ensure digital storage of all source documentation; upgrade and interlink State databases; and establish connections to Federal electronic databases.[10] The Honorable Leticia Van de Putte, Texas State Senator and President of NCSL, echoed those concerns at the same hearing, emphasizing the burden that the costs and implementation timeline would create.[11]

After DHS issued its final regulations, DHS Assistant Secretary for Policy Stewart Baker testified in April 2008 that the final regulations reduced the cost to the States from the $14.6 billion esti-

[9] Those states with laws prohibiting compliance with REAL ID are Alaska, Arizona, Georgia, Idaho, Louisiana, Maine, Minnesota, Missouri, Montana, New Hampshire, Oklahoma, Oregon, South Carolina, Virginia, and Washington.

[10] *See* Senate Homeland Security and Governmental Affairs Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia Hearing on Understanding the Realities of REAL ID: A Review of Efforts to Secure Drivers' Licenses and Identification Cards (S. Hrg. 110–291), p. 26–27, March 26, 2007.

[11] *Id.* at p. 22–23.

mated for the NPRM's proposal to $3.9 billion. This 73 percent reduction from the NPRM was achieved, according to DHS, by giving States more flexibility in security requirements and timing.[12] However, NGA disagreed with that savings estimate. For example, according to NGA DHS assumed that only 75 percent of all drivers would choose to receive a REAL ID, while the States estimated that this figure could be substantially higher, particularly if States decline to offer their residents an alternative license that is not REAL ID compliant.[13]

States view REAL ID as an unfunded mandate, and the majority of governors and State legislators have maintained the position that the federal government should bear the majority of implementation costs. To date, the Department of Homeland Security has awarded approximately $140 million to States to implement the requirements of REAL ID, with another $50 million appropriated for FY 2010.[14] DHS has also allowed States to reallocate up to 20 percent of their State Homeland Security Program grants for REAL ID implementation since FY 2007; however, States note that those funds are already committed to other pressing homeland security projects and have generally been unavailable for REAL ID.

NGA has estimated that PASS ID would cut in nearly half the implementation costs to States by granting additional flexibility, modifying requirements and eliminating fees for federal databases, and allowing for date-forward renewals to distribute compliant licenses and identification cards, meaning that States would be given a date when they are required to begin issuing compliant licenses as opposed to a date when all residents must possess a compliant license.[15]

RENEWAL CYCLE

One significant cost driver for States is the requirement to issue compliant driver's licenses and identification cards to all current card holders in person and within a condensed timeframe. The original NPRM for the REAL ID Act would have required that States reissue all driver's licenses and identification cards no later than May 11, 2013. States expressed concern over the disruption that they would face to their regular renewal cycles under this timeframe. At the 2007 OGM hearing, Texas State Senator Van de Putte said that implementing REAL ID under the NPRM would have required approximately 741 additional full time positions and 18 additional facilities in the State of Texas alone.[16]

Most States currently reissue driver's licenses every 5 to 10 years, though at least one State issues licenses that are valid for 65 years.[17] Additionally, all States rely on mail-in and online appli-

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[12] Senate Homeland Security and Governmental Affairs Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia Hearing on The Impact of Implementation: A Review of the REAL ID Act and the Western Hemisphere Travel Initiative (S. Hrg. 110–555), p. 63, April 29, 2008.

[13] *Id.* at p. 36.

[14] *Id.* at p. XX.

[15] Testimony of David Quam, Director, Office of Federal Relations, National Governors Association before Senate Committee on Homeland Security and Governmental Affairs, July 15, 2009.

[16] Testimony of Leticia Van de Putte, Texas State Senator before Senate Committee on Homeland Security and Governmental Affairs, March 26, 2007.

[17] Division of Motor Vehicles, State of Arizona, *http://www.dmv.com/az/arizona/drivers-license.*

cation processes to facilitate a significant percentage of renewals. REAL ID thus will not only require a number of States to accelerate their existing schedules; it also will require them to do so while issuing and reissuing licenses in person. Both of these factors require additional staff and, therefore, impose significant new costs.

To try to address those concerns, the final rule provided for a phased enrollment period, whereby States would be required to issue new licenses to all residents under the age of 50 by December 1, 2014. States would have until December 1, 2017 to enroll individuals over the age of 50.

DHS justified these staggered deadlines by citing statistical analysis finding that "persons over the age of 50 were less likely to be involved in TSA-related law enforcement incidents involving false or fraudulent identification."[18] However, the Governors argued that this change did not go far enough. At the July 2009 HSGAC hearing, Vermont Governor Jim Douglas argued for further flexibilities. Meeting this deadline, he explained, would still require States to alter existing timetables for driver's license re-issuance and significantly increase costs to the States.[19]

PASS ID would allow States to begin issuing compliant licenses more in line with their current renewal cycle by requiring compliance with PASS ID for all new or renewed licenses issued one year or more after the effective date of interim regulations promulgated pursuant to PASS ID. At the same time, the bill accelerates the enrollment process by requiring States to complete the process in five years, at which point all license holders must possess a PASS ID compliant license to use it for federal purposes. So, for example, if S. 1261 becomes law during the 111th Congress, all States would be fully compliant with PASS ID before 2017, the current REAL ID completion date.

The Committee believes this compromise appropriately balances the States' need for flexibility with the national interest in achieving secure identification documents expeditiously.

AVAILABILITY OF MANDATED TECHNOLOGIES

REAL ID requires States to verify the source documents, or the essential information contained on the source documents, with the issuing agency. For example, the validity of a Social Security number would need to be verified with the Social Security Administration. The most feasible way to obtain this verification is through the use of electronic systems and databases. Otherwise, verification would have to be done by telephone or mail, which could substantially lengthen the application and issuance process. In order to comply with REAL ID, a State would need to access five separate electronic systems.[20]

Currently, only two of the five systems required by REAL ID are fully developed and nationally deployed—the Systematic Alien Verification for Entitlements (SAVE) system, administered by U.S. Citizenship and Immigration Services at DHS, and the Social Secu-

[18] 73 Fed. Reg. 5275 (January 29, 2008).
[19] Testimony of the Honorable Jim Douglas, Director, Governor, State of Vermont before Senate Committee on Homeland Security and Governmental Affairs, July 15, 2009.
[20] Public Law 109–13, Division B—The REAL ID Act of 2005.

rity On-Line Verification (SSOLV) system, administered by the Social Security Administration.

The third system, the Electronic Verification of Vital Events Records (EVVE) system, which would be used to verify birth certificates, has yet to be fully populated and deployed and will cost States millions of dollars to ensure all birth records are electronically accessible and accurate. According to testimony submitted for the Committee's July 2009 hearing record from the National Association of Public Health Statistics and Information Systems, which administers EVVE, only three State DMVs are currently online with EVVE. The system currently contains partial birth record information for 15 States, but the system requires additional work to input and confirm records to improve reliability and accuracy.[21] Once State vital records offices are connected to EVVE, State DMVs must make the necessary investments and system adjustments to gain access to the database. Estimates suggest that it will cost States at least $150 million to complete the necessary work and allow the effective utilization of EVVE as part of the driver's license and identification card application process.[22] There is no way to determine when EVVE will be fully deployed to all 50 States and contain the necessary vital records.

The other two required electronic systems are: a system that connects to the State Department to verify passport information, which does not currently exist; and a system connecting each of the State DMVs to allow States to check for duplicate licenses. In addition to privacy concerns raised over these interlinking databases and the costs associated with States enabling such information sharing, no electronic system has been developed to connect the motor vehicle records of all 50 States. A pilot program, using funds provided by DHS to the State of Mississippi, is currently underway to develop and test the State-to-State connectivity, but it is unclear when it will be completed and available to the States.

Governors and State legislators object to being required to use electronic systems that are not currently available and many over which they have no control. At the Committee's 2007 hearing, Ms. Van de Putte of NCSL testified, "It is critical that States not be required to electronically verify the validity of identification documents with the issuing agency until the necessary verification systems have been developed, tested and made available nationwide."

The PASS ID Act requires the presentation of the same documentation to State DMVs as required under REAL ID. Where there are existing functional databases, such as the federal databases for verifying immigration status and social security numbers, as discussed above, States will be required to use them.

However, where there is no practical way to verify documents, the verification requirement is substituted for a validation requirement. This means that a person with fraudulent document training must examine the document to determine its authenticity, as the State Department does with birth certificates when it issues passports.

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[21] Baker Testimony, p. 5.

[22] Statement of the National Association for Public Health Statistics and Information Systems for the Record Senate Committee on Homeland Security and Governmental Affairs, July 15, 2009.

As introduced, PASS ID would have required the validation, rather than verification, of birth certificates, because the EVVE system is not fully populated with data and is operational only in three States' DMVs. At the 2009 HSGAC hearing, former Homeland Security Assistant Secretary Stewart Baker raised concerns over the exclusion of electronic verification requirements for birth certificates in the PASS ID Act.[23] Subsequently, the Committee addressed this concern as part of a Lieberman-Collins-Voinovich substitute amendment, which included provisions to phase in the use of the birth certificate verification database. As amended, PASS ID would require that birth certificate information be electronically verified through the EVVE system no later than 6 years after the date of enactment, provided that the Secretary of Homeland Security has certified that the EVVE system is functioning and has access to all States' electronic birth records. This provision will remove REAL ID's impractical requirement of using a system that has not yet been implemented nationwide and will enhance security by ensuring that States eventually use the system. Once the Secretary has certified that EVVE has been sufficiently developed, States would be required to utilize the system for any individual that has applied for a compliant driver's license or identification card and has not previously had his or her birth certificate verified. Additionally, to address concerns with the costs of fully implementing EVVE, the substitute amendment establishes a grant program for States to digitize birth information, link that data to death records, and electronically verify birth certificate information. The bill also requires that any State accepting these grants certify that all birth records in that State will be digitized and accurate within three years of receiving the grant.

The PASS ID Act would also codify the established pilot program for State-to-State driver's license information sharing with the goal of evaluating the feasibility of such an electronic system, its costs, and the necessary governance structure to ensure security and privacy. This would help States develop and evaluate a mechanism for sharing electronic information to verify the existence of a single compliant driver's license or identification card in which States could choose to participate. The Committee encourages States to participate in this program and work collaboratively with DHS to expand inter-State DMV information sharing capabilities.

CHARGES FOR USE OF EXISTING FEDERAL DATABASES

Under the REAL ID Act, States must use the Systematic Alien Verification for Entitlements (SAVE) database from DHS to verify immigration status and the Social Security Online Verification (SSOLV) database from the Social Security Administration to verify Social Security numbers. Currently, States must pay transactional fees in order to use these databases, which DHS estimates will cost States $56.8 million over 11 years.[24]

The Committee has determined that the use of these databases is a necessary component of identification security. However, the Federal government, rather than States, should fund the use of these federal databases to comply with a federal law. Therefore,

[23] Baker Testimony, p. 4.

[24] E-mail from Legislative Affairs, DHS, to Majority Staff, Committee on Homeland Security and Governmental Affairs (November 18, 2009).

the PASS ID Act specifies that States shall not be charged transaction fees for the use of federal electronic systems to implement this Act. Congress will need to appropriate additional resources in the future in order to fund the use of these databases by every State.

INFORMATION STORAGE AND PHYSICAL SECURITY REQUIREMENTS

Additional areas of high cost under REAL ID are the requirements to electronically store copies of applicants' identity documents and to ensure the physical security of DMV facilities. The requirement to electronically store information requires investments in both storage capacity and the modification of information technology systems. The physical security requirements have posed challenges for States, in part due to the late release of more specific information and guidance from DHS. Although REAL ID was enacted in 2005 and DHS issued its final rule in January 2008, DHS did not release the guidelines for physical security requirements until February 2009, giving States little time to assess the vulnerabilities of their facilities and to determine the best means of enhancing security where necessary. Some States have determined that it would be cost-prohibitive to meet security requirements at all facilities and are considering changing their operations into a central issuance system that requires significant process, facility, and staff adjustments.

To address these concerns, PASS ID modifies the requirement for storage of documents used to prove identity. First, the State need only keep them for the period for which the driver's license or identification card is valid, rather than a period of seven to ten years, as REAL ID requires. PASS ID would also allow DMVs to store such information in either electronic or paper format, as opposed REAL ID's requirement to keep them in both formats. With respect to physical security requirements, PASS ID would retain many of the requirements of REAL ID to better secure facilities where driver's licenses and identification cards are stored or issued but makes clear that States can choose from a variety of safeguards to achieve this goal.

PRIVACY AND CIVIL LIBERTIES

The CATO Institute, the American Civil Liberties Union, and the Center for Democracy and Technology (CDT), as well as NGA and NCSL, testified before the OGM subcommittee that the REAL ID Act posed serious privacy and civil liberties concerns.

According to testimony from CDT at the July 15, 2009 hearing, the REAL ID Act failed to address privacy concerns surrounding secure licensing. CDT contends that the Act and DHS's final rule implementing it created new privacy and security risks while exacerbating old ones.[25] The REAL ID Act failed to include statutory provisions to protect the privacy of individuals' personally identifiable information. The American Civil Liberties Union's testimony at the 2007 hearing pointed to four main privacy issues: data on the face of the cards, data stored in the machine-readable zone of

[25] Statement of Ari Schwartz, Vice President and Chief Operating Officer, Center for Democracy and Technology before Senate Committee on Homeland Security and Governmental Affairs, July 15, 2009 (hereafter "Schwartz Testimony"), at p. 2.

the card, data stored in interlinked State Department of Motor Vehicles (DMV) databases, and the transmission of data.[26] Additionally, privacy advocates feared that REAL ID would lead to a de facto national ID card because of the network of interlinked databases and the authority for the Secretary of Homeland Security to declare new official purposes for which a compliant card would be needed.

In addition, the REAL ID Act does not contain processes and mechanisms to give individuals the ability to access, and amend as necessary, information about them stored in Federal or State databases.

The Department of Homeland Security maintained that because it was not explicitly authorized to protect privacy in the REAL ID Act, it did not have the legal authority to include such protections in the regulations.

The PASS ID Act contains several important privacy protections aimed at mitigating most of the concerns expressed by privacy advocates. The PASS ID Act would require future regulations to include procedures to protect the constitutional rights and civil liberties of those who apply for licenses or identification cards, protect individuals' ability to challenge and correct errors in databases and data records, and would prohibit a national, universal design or numbering scheme for licenses. In addition, the definition of "official purpose", which designates which federal purposes will require a compliant license or identification card, would be limited to the purposes defined in statute and so could not be expanded without congressional action.

Information on the face of the card

The REAL ID Act requires people to list their principal place of residence on their driver's licenses and identification cards. This has been a source of substantial concern for victims of domestic violence and others, who fear that making their address so readily available could put them in danger.[27] The 2006 reauthorization of the Violence Against Women Act[28] required that there be exceptions to this REAL ID Act mandate for the principal residence requirement for certain individuals in these categories, and these exceptions were incorporated into the REAL ID regulations.

The PASS ID Act generally would maintain the requirement to include the address of principle residence, but it explicitly incorporates the Violence Against Women Act exemption, and further provides that States can except the principle address for an individual whom a State has determined merits the exemption for his or her safety.

The REAL ID Act also requires that temporary driver's licenses or identification cards be conspicuously marked, indicating that they are temporary, and non-compliant licenses are required to

[26] Senate Homeland Security and Governmental Affairs Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia Hearing on Understanding the Realities of REAL ID: A Review of Efforts to Secure Driver's Licenses and Identification Cards (S. Hrg. 110–291), p. 75, March 26, 2007.

[27] Senate Homeland Security and Governmental Affairs Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia Hearing on Understanding the Realities of REAL ID: A Review of Efforts to Secure Drivers' Licenses and Identification Cards (S. Hrg. 110–291), p. 81, March 26, 2007.

[28] Violence Against Women & Department of Justice Reauthorization Act of 2005, Pub. L. No. 109–162, § 827, 119 Stat. 2960, 3066 (2005).

clearly state on their face that they may not be accepted by a federal agency for identification or any other official purpose. States argue that the requirement in the REAL ID Act regulations to label compliant licenses and identification cards as well as non-compliant cards creates a duplicative and unnecessarily costly system that does not contribute to security.

The PASS ID Act would remove the duplicative requirement that a driver's license or identification card have a separate marking indicating that a license is temporary, and instead denotes temporary status with the expiration date. The bill requires that States mark compliant documents, instead of non-compliant documents. Removing duplicative information will make the information on licenses more useful and easy to read.

The bill also requires a photograph of the license holder on the face of the card. The Committee intends for this photograph to be a clear view of the entire face. The Committee recommends that DHS use the State Department passport photograph regulations as guidance. The State Department regulations are designed to conform to International Civil Aviation Organization (ICAO) photo standards and allow for certain religious exemptions. For example, religious headgear is acceptable as long as the face is not obscured.

Machine-readable zone of the card

The REAL ID Act requires that driver's licenses and identification cards include a common, machine-readable component. The final implementing regulations for REAL ID specify that compliant licenses should contain a two-dimensional barcode standard, which is read with the use of an optical scanner. There are currently no statutory prohibitions on who may access the data and information contained within machine-readable zones of driver's license and identification cards, or how that information may be used. This creates a vulnerability through which third-parties could scan and utilize personal information without the consent of the card holder, creating privacy and identity theft concerns.

PASS ID adds new protections to mitigate privacy and identity theft risks associated with the inclusion of machine-readable zones on driver's licenses and identification cards. The PASS ID Act would prohibit the inclusion of a social security number on the machine readable zone of a license. In addition, the bill would restrict the use of machine-readable information on a driver's license or identification card by third-parties. To clarify the scope of this prohibition, the substitute amendment adopted by the Committee clarifies that scanning is permitted when an individual has given his or her express consent,[29] for law enforcement purposes, for consumer fraud prevention, and for certain financial transactions, such as credit checks. The amendment directs the Federal Trade Commission to issue rules for implementing these restrictions, which would apply to all driver's licenses and identification cards.

The Committee recognizes that there are a number of legitimate purposes for which the information contained in the machine readable component of a driver's license or identification card may be

[29] "Express consent" is defined in 18 U.S.C. 2725 to mean "consent in writing, including consent conveyed electronically that bears an electronic signature as defined in section 106(5) of Public Law 106–229." The Committee notes that that definition would apply to this provision of law as well.

scanned and utilized. Such purposes may include, but are not limited to, scanning and providing information to banks for credit checks and credit card issuance purposes; scanning and using information for law enforcement purposes; scanning and using information to prevent consumer fraud and identity theft; and scanning and sharing the information among federal, State, or local agencies. The Committee does not intend to prohibit any such legitimate uses, and the Chairman stated his intent at the July 29 business meeting to continue to work on this language and amend it on the floor to be more permissive.

PASS ID also strengthens privacy protections more generally by requiring procedures to prevent the unauthorized access to, or sharing of, information; requiring public notice of privacy policies; and establishing a redress process for individuals to correct their records. New regulations would require procedures to protect the constitutional rights and civil liberties of those who apply for licenses or IDs, and provide individuals with the ability to challenge and correct errors in databases and data records.

Electronic data transmission

The REAL ID Act calls for DMVs to communicate with several Federal databases, all other State databases, and would most likely result in States consulting the EVVE database that the National Association of Public Health Statistics and Information Systems maintains. However, the REAL ID Act does not require protection of the electronic communication among these systems and networks, which could leave personally identifiable information open to theft or fraud.

These required databases reside at different agencies, non-governmental entities, and State and local governments. These systems may already provide some protection for transmitting data, but in cases where data were not previously shared, there may be no protection or encryption.

The PASS ID Act would require that future regulations include procedures to protect any personally identifiable information electronically transmitted in support of complying with the PASS ID Act. While groups such as the ACLU[30] and the Center for Democracy and Technology[31] have specifically called for encryption as the solution, the PASS ID Act stays technology-neutral in its statutory language. This will allow an open rulemaking process to produce the best processes to ensure the protection of personally identifiable information.

Access to air travel and other official purposes

To date, fifteen States have enacted laws prohibiting compliance with REAL ID, and several others have anti-REAL ID legislation pending. Unless these States repeal their laws, their residents will face restrictions on their movements and actions because they won't have the necessary identification to present when seeking, for example, to board a plane or enter a federal building. These restric-

[30] Senate Homeland Security and Governmental Affairs Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia Hearing on Understanding the Realities of REAL ID: A Review of Efforts to Secure Drivers' Licenses and Identification Cards (S. Hrg. 110–291), p. 84, March 26, 2007.

[31] Schwartz Testimony, p. 4.

tions will be exacerbated by the fact that many businesses share facilities with federal agencies; and according to testimony from the Chamber of Commerce at the 2008 hearing, the guidance for identification at such facilities was complicated and confusing.[32]

To address concerns with the breadth of REAL ID's official purpose section, while meeting the homeland security objectives, PASS ID would require compliant identification for air travel, access to nuclear facilities, and Federal facilities that contain mission functions critical to homeland security, national security, or defense, such as the Pentagon, fusion centers, or classified laboratories.

In addition, the PASS ID Act includes language to clarify the Secretary of Homeland Security's unreviewable discretion to determine who may or may not board a commercial aircraft. This does not change the Secretary's current authorities under the REAL ID Act, but rather was included to allay concerns expressed that the REAL ID Act was unclear on this point. Since its inception, the Transportation Security Administration (TSA), an agency under the Secretary's purview, has always had the statutory authority to set screening procedures for cargo and people boarding commercial aircraft. While the REAL ID Act set standards for what type of State issued identification documents TSA can rely upon in its screening process, it did not rescind TSA's authority to rely on other types of identification documents or use other methods to ascertain identity. During the July 15, 2009, hearing on the PASS ID Act, Secretary Napolitano testified that inclusion of language clarifying TSA's authority in this regard would not change TSA's current operating procedure.[33]

PASS ID, as introduced, provided that "no person shall be denied boarding a commercial aircraft solely on the basis of failure to present a driver's license or identification card issued pursuant to this subtitle." At the July 2009 hearing, former DHS Assistant Secretary Stewart Baker testified that the wording of this provision may lead to litigation by those denied boarding an aircraft because they did not have a compliant license, since the language was ambiguous on what is meant by "solely."[34] To address this concern, Senator Voinovich offered an amendment clarifying the intent to codify the TSA's existing authority. That amendment, adopted by the Committee, provides: "Any person not presenting a driver's license or identification card issued pursuant to this subtitle may be permitted to board a commercial aircraft or denied permission to board such aircraft at the unreviewable discretion of the Secretary or his or her designated security official."

III. Legislative History

On June 15, 2009, S. 1261 was introduced by Senator Akaka and was referred to the Committee on Homeland Security and Governmental Affairs. Senators Alexander, Baucus, Burris, Carper, Leahy, Lieberman, Voinovich, and Tester are cosponsors of the legislation.

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[32] Senate Homeland Security and Governmental Affairs Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia Hearing on The Impact of Implementation: A Review of the REAL ID Act and the Western Hemisphere Travel Initiative (S. Hrg. 110–555), p. 53, April 29, 2008.

[33] Senate Homeland Security and Governmental Affairs Committee Hearing on Identification Security: Reevaluating the REAL ID Act, July 15, 2009.

[34] Baker Testimony, p. 5–6.

On July 15, 2009, the Committee held a hearing on S. 1261. Witnesses included: Janet Napolitano, Secretary of Homeland Security; Jim Douglas, Governor of Vermont; Stewart A. Baker, former Assistant Secretary for Policy, DHS; Leroy D. Baca, Sheriff, Los Angeles County; David Quam, Director of Federal Relations, NGA; and Ari Schwartz, Vice President and Chief Operating Officer, Center for Democracy and Technology.

On July 29, 2009, the Committee ordered S. 1261, as amended by the Lieberman-Collins-Voinovich substitute amendment, the Tester amendment, and the Voinovich amendment, reported favorably by voice vote. Present for the vote were Chairman Lieberman; Senators Akaka, Carper, Pryor, McCaskill, Tester, and Burris; Ranking Minority Member Collins; Senator Voinovich.

The Lieberman-Collins-Voinovich substitute amendment makes a number of policy changes as well as technical changes to the bill as introduced.

First, the amendment requires that birth records be verified with the issuing agency no later than 6 years after the issuance of final regulations, provided that the Secretary of Homeland Security has certified that an electronic system enabling such verification is functioning and has access to all States' electronic birth records. It also establishes a grant program to help States digitize birth and death records and authorizes $150 million for the grants.

Second, it struck section 242(a)(1)(B), which stated that an individual may not be denied the right to board an airplane solely on the basis of not presenting a PASS ID compliant license.

Third, the amendment modifies Section 4 of S. 1261 to direct the Federal Trade Commission to issue rules for the exceptions to the prohibition on certain uses of the data on the machine-readable component of a driver's license or identification card.

Fourth, the amendment authorizes DHS to issue an interim final rule implementing PASS ID, instead of repeating the Notice of Proposed Rulemaking (NPRM) process that was already executed for the REAL ID Act.

As discussed in the previous section, the Voinovich amendment clarifies the Secretary's unreviewable discretion to deny or grant an individual boarding on a commercial aircraft.

The Tester amendment adds a provision requiring reporting on the privacy impacts of the PASS ID Act.

IV. Section-by-Section Analysis

Section 1. Short title

This section establishes the title of the act as the "Providing for Additional Security in States' Identification Act of 2009" or the "PASS ID Act."

Section 2. Repeal

This section repeals Title II of the REAL ID Act of 2005 (Division B of Public Law 109–13).

Section 3. Identification security

This section amends Title II of the Homeland Security Act of 2002 (6 U.S.C. 121 et seq.) by adding a new subtitle E, which im-

proves security for driver's licenses and personal identification cards.

Section 241 of the new subtitle E would define the terms "driver's license," "identification card," "materially compliant," "official purpose," "Secretary," and "State."

Subsection 242(a) of the new subtitle E sets the minimum standards for an identification document that is to be used for certain official purposes, including boarding commercial aircraft and entering certain secure federal facilities. Beginning one year after the interim final rule is issued, a federal agency could not accept, as a means of identification for an official purpose, any driver's license or State-issued identification card unless the State is materially compliant by certifying to the Secretary that the State has commenced issuing driver's licenses and identification cards that comply with the requirements of the PASS ID Act. Beginning six years after enactment, a federal agency could not accept, as a means of identification for an official purpose, any driver's license or State-issued identification card that is not compliant. Additionally, this section provides that the Secretary of Homeland Security shall prescribe a process to certify whether States are meeting the standards for identification security. This section would clarify that any identification document meeting the requirements of subtitle E could be certified as compliant with the subtitle.

Subsection 242(b) of the new subtitle E sets the minimum requirements for the contents of a compliant driver's license or identification card, including: (1) the person's legal name; (2) the person's date of birth; (3) the person's gender; (4) a driver's license or identification card number; (5) a digital photograph of the person; (6) a person's address, except as excepted by the Violence Against Women Act or for those whom a State determines should be excepted for safety reasons; (7) the person's signature; (8) security features to protect the physical integrity of the document; (9) a common machine-readable technology; and (10) a unique symbol designating that the document is compliant with the requirements of this subtitle.

Subsection 242(c) of the new subtitle E sets the minimum standards for a State to issue a compliant driver's license or identification card. In order to obtain a compliant document, an individual must present a photo identity document, except that a non-photo document is acceptable if it includes both the person's full name and date of birth; proof of date of birth; proof of the person's social security number; documentation showing a person's address of principle residence; and evidence that a person is a citizen of, or has lawful status in, the United States. This section requires that licenses may only be issued temporarily to individuals who are not citizens, lawful permanent residents, or certain asylees or refugees. Temporary driver's licenses and identification documents would be required to clearly show an expiration date and would be valid only for an individual's authorized period of admission to the United States or for one year, if no such date exists. States would be required to use the automated system known as Systematic Alien Verification for Entitlements to verify the lawful presence of any person other than a United States citizen or national applying for compliant identification.

Subsection 242(d) of the new subtitle E requires States to adopt several practices in issuing licenses, including: (1) physical or electronic retention of source documents; (2) a facial image capture to create a digital photograph; (3) an effective procedure to confirm or verify renewal information; (4) confirmation of social security account numbers; (5) electronic verification of birth records after certification that such electronic systems exist after six years; (6) confirmation that an applicant does not possess or has surrendered any other identification compliant with this subtitle; (7) physical security of document manufacturing; (8) protecting the personally identifiable information of driver's license and identification card holders and access to amend State information as determined appropriate by the State; (9) appropriate background checks of individuals involved in issuance of driver's licenses and State-issued identification cards; (10) fraudulent document recognition training for issuing staff; and (11) limiting the validity of any compliant driver's license or identification card to eight years.

Subsection 242(e) of the new subtitle E requires that the Secretary assess, at least annually, whether an electronic system to allow reliable real-time verification of birth records exists, is adequately deployed, and includes necessary security and privacy measures.

Subsection 242(f) of the new subtitle E requires that States adopt an exceptions process for documentation presented pursuant to section (c) that applicants may not have due to reasons beyond their control, including loss through natural disasters. Alternative documents may not be used to demonstrate lawful presence unless such documents establish that the applicant is a citizen or national of the United States.

Subsection 242(g) of the new subtitle E provides that States may not be required to pay fees for the use of a federal system or database in connection with fulfilling the requirements to issue a compliant driver's license or identification card.

Subsection 242(h) of the new subtitle E clarifies that States are not prohibited from issuing driver's licenses, identification cards, or other documents that are not in compliance with the requirements of this subtitle, although federal agencies may not accept non-compliant documents for an official purpose.

Section 243 of the new subtitle E requires that the Secretary of Homeland Security keep a record in the appropriate aviation security screening database of any individual convicted of using a false driver's license or State-issued identification card at an airport.

Subsection 244(a) of the new subtitle E establishes a grant program to assist States in conforming to the minimum standards of this subtitle. At least two-thirds of yearly grants made available through appropriated funds would be distributed proportionally to the States based on the number of driver's licenses or identification cards issued in the prior year. The remaining third would be allocated by the Secretary of Homeland Security at his or her discretion. Each State would be guaranteed at least 0.35 percent of the total allocation, except certain U.S. territories would be guaranteed at least 0.08 percent of the total allocation.

Subsection 244(b) of the new subtitle E establishes a grant program to assist States in digitizing birth records, linking birth records with death records, and electronically verifying birth

records. Such grants would be distributed through the Federal Emergency Management Agency in coordination with the Secretary of Health and Human Services.

Section 245 of the new subtitle E codifies a demonstration project, which is currently underway with the support of the Department of Homeland Security, to evaluate the feasibility of a State or States establishing a system to assist in determining whether an applicant already possesses a driver's license or identification card issued pursuant to the requirements of subsection 242(d). This section requires that the demonstration project include: a review of the costs of such a system; the security and privacy measures necessary to protect the integrity and physical security of licenses; and a governance structure for managing such a system, which would also protect the security and confidentiality of personally identifiable information contained in the system. This section does not authorize the creation by the federal government of a national database of driver's license information or require States to provide all other States with direct access to their motor vehicle databases.

Section 246 of the new subtitle E gives the Secretary of Homeland Security, in consultation with the Secretary of Transportation and the States, the authority to issue regulations, set standards, and issue grants under this subtitle. This section also permits the Secretary of Homeland Security to grant a State an extension of time to comply with the requirements if the State provides adequate justification.

Section 247 of the new subtitle E would clarify that nothing in this subtitle be construed to affect the authority of States or the Secretary of Transportation under chapter 303 of title 49, United States Code. That chapter directs the Secretary of Transportation to establish a National Drivers' Registry to track individuals ineligible for a driver's license. In addition, this section would make clear that no State laws that are both consistent with this subtitle or rules issued to implement this subtitle and more protective of personal privacy than required by this subtitle or by regulations issued to implement this subtitle, would be preempted by this subtitle.

Section 4. Identification security

This section amends Chapter 123 of title 18, United States Code by adding subsection 2272(c), which includes new prohibitions on the use of machine readable information stored on driver's licenses or State-issued identification cards.

The new subsection 2272(c) would allow the scanning or reading of information contained in the machine-readable zone of a driver's license or State-issued identification card. Such information would be prohibited from being resold, shared, or traded with third parties, used to track the use of a driver's license or identification card, or stored by creating a record. Within two years, the Federal Trade Commission must issue regulations to define exceptions to those prohibitions through a collection of acceptable uses. At a minimum, such exceptions would include using the information for credit checks, for law enforcement purposes, for prevention of consumer fraud, in support of privacy laws, or for a use for which the

driver's license or identification card holder has given their express written consent.

Section 5. Rulemaking

This section requires DHS to promulgate interim final rules to implement the PASS ID Act within nine months of the law's enactment.

The interim final regulations, as well as the final regulations, must include procedures and requirements to protect the privacy rights, constitutional rights, and civil liberties of individuals who apply for and hold compliant driver's licenses or identification cards. The regulations would also require procedures to protect any electronically transmitted personally identifiable information, both inside the federal government and among the States. In addition, a process must be established to allow individuals to access, amend, and correct their own personally identifiable information contained in federal databases used to comply with this Act. Some federal systems already have such procedures in place in accordance with the Privacy Act and will not be required to create new procedures. The regulations may not require that States use a common numbering or design standard for driver's licenses and identification cards. The regulations will apply only to driver's licenses and identification cards that are issued in compliance with the PASS ID Act and not to non-compliant documents or other identification documents issued by States.

Section 6. Savings provision

This section includes a savings of certain administrative actions, such as personnel actions, agreements, grants, and contracts, carried out under the REAL ID Act. It also clarifies that laws that were amended or repealed by title II of the REAL ID Act of 2005 would be left unchanged by S. 1261.

Section 7. Annual privacy report

This section requires the DHS Chief Privacy Officer and the Civil Rights and Civil Liberties Officer to issue an annual report analyzing privacy implications of implementation of this Act to the Senate Homeland Security and Governmental Affairs Committee and the House Homeland Security Committee.

V. Evaluation of Regulatory Impact

Pursuant to the requirement of paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill.

VI. Congressional Budget Office Cost Estimate

October 15, 2009.

Hon. Joseph I. Lieberman,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1261, the Providing for Additional Security in States' Identification Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 1261—Providing for Additional Security in States' Identification Act of 2009

Summary: S. 1261 would repeal title II of the REAL ID Act of 2005 (Division B of Public Law 109–13) and place new requirements on states to improve the security of driver's licenses and identification cards. The legislation would authorize the appropriation of whatever sums are necessary for fiscal years 2010 through 2015 for the Department of Homeland Security (DHS) to make grants to states to help them comply with the bill's requirements. The bill also would authorize the appropriation of $150 million over the 2011–2013 period for DHS to make grants to states to ensure the accuracy of birth records. In addition, S. 1261 would direct DHS to establish a demonstration project relating to the security and integrity of driver's licenses.

S. 1261 also would waive the fees that states currently pay to access certain DHS and Social Security Administration (SSA) databases to check the eligibility of applicants for driver's licenses and identification cards. The bill would establish new federal crimes relating to the misuse of data on driver's licenses and identification cards.

CBO estimates that implementing S. 1261 would increase discretionary costs by $123 million over the 2010–2014 period, assuming appropriation of the necessary amounts. We estimate that enacting the bill would increase direct spending by $4 million over both the 2010–2014 and 2010–2019 periods. Enacting S. 1261 would have no significant effect on revenues.

S. 1261 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) because it would require states to have security and privacy policies for personally identifiable information that they collect. Many states currently have similar policies. CBO estimates that the cost of creating or updating such policies to comply with the new requirements would be small and well below the threshold established in UMRA for intergovernmental mandates ($69 million in 2009, adjusted annually for inflation).

S. 1261 would impose a private-sector mandate as defined in UMRA by prohibiting persons from scanning and storing certain information contained on a driver's license or identification card. CBO estimates that the cost of complying with the mandate would fall below the annual threshold for private-sector mandates ($139 million in 2009, adjusted annually for inflation).

Estimated Cost to the Federal Government: The estimated budgetary impact of S. 1261 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice).

	By fiscal year in millions of dollars—					
	2010	2011	2012	2013	2014	2010–2014
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
DHS Grants to States for Birth Records						
Authorization Level	0	150	0	0	0	150
Estimated Outlays	0	6	23	39	30	98
DHS Demonstration Project						
Estimated Authorization Level	25	0	0	0	0	25
Estimated Outlays	15	5	5	0	0	25
Total Changes						
Estimated Authorization Level	25	150	0	0	0	175
Estimated Outlays	15	11	28	39	30	123
CHANGES IN DIRECT SPENDING						
Waiver of DHS Fees:						
Estimated Authorization Level	2	2	0	0	0	4
Estimated Outlays	2	2	0	0	0	4

Note: DHS = Department of Homeland Security.

Basis of Estimate: For this estimate, CBO assumes that S. 1261 will be enacted near the beginning of fiscal year 2010. We estimate that implementing the bill would increase discretionary spending by $123 million over the 2010–2014 period, assuming appropriation of the necessary amounts. We estimate that enacting the bill would increase direct spending by $4 million over both the 2010–2014 and 2010–2019 periods. Enacting S. 1261 would have no significant effect on revenues.

Spending subject to appropriation

DHS Grants for Birth Records. S. 1261 would authorize the appropriation of $150 million over the 2011–2013 period for DHS to make grants to states to ensure the accuracy of birth records. CBO assumes that $150 million will be appropriated by the beginning of fiscal year 2011 and that outlays will follow the historical spending patterns for similar activities.

DHS Demonstration Project. The bill would authorize the appropriation of whatever sums are necessary for fiscal years 2010 through 2012 for a demonstration project to evaluate an electronic system for verifying that applicants for driver's licenses or identification cards do not already possess such documents. The Congress appropriated $50 million in fiscal year 2009 for DHS to begin this project. Based on information from DHS, CBO estimates that the department would need $25 million in 2010 to complete the demonstration project and that these funds would be spent by the end of fiscal year 2012.

Grants to Assist States in Complying with Bill's Requirements. Title II of the Real ID Act of 2005 (Division B of Public Law 109–13, the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005) placed requirements on states to improve the security of driver's licenses and identification cards by May of 2008. Since enactment, nearly half the states have passed laws or resolutions opposing the act, and DHS has delayed the deadline. (Currently, states must achieve partial compliance with the provisions of the REAL ID Act by December 31, 2009, and full compliance by May of 2011.) CBO has no basis for estimating the number of states that will comply with the

REAL ID Act, so we cannot compare the compliance costs of S. 1261 with those under current law.

The REAL ID Act authorized the appropriation of whatever sums are necessary for fiscal years 2005 through 2009 for DHS to make grants to states to assist them in complying with the act's provisions. Over the 2006–2009 period, the Congress appropriated about $140 million for this purpose. However, the Administration's estimate of the total costs to states to comply with the act exceeded $1 billion. As noted above, it is possible that many states will not comply with the act's provisions, so federal costs to help states implement the REAL ID Act are uncertain.

S. 1261 would authorize the appropriation of whatever sums are necessary over the 2010–2015 period for DHS to make grants to states to help them comply with the bill's provisions. The legislation would repeal title II of the REAL ID Act of 2005, but the bill contains new provisions that would require states to improve the security of driver's licenses and identification cards. Compared to current law, S. 1261 would provide more flexibility to states in adopting methods to verify identification documents provided by driver's license applicants.

If all states choose to comply with the provisions of the REAL ID Act, CBO expects that the compliance costs of S. 1261 would be less expensive than those under current law because of the greater flexibility provided by the bill. Because we do not know how many states will eventually comply with the REAL ID Act, however, we have no basis for estimating the costs or savings of S. 1261 relative to current law.

SSA. Under current law, states reimburse the Social Security Administration (SSA) for state motor-vehicle agencies' use of the Social Security Online Verification (SSOLV) system. In recent years, states have conducted roughly 20 million SSOLV queries annually. At an average cost of around 1 cent per transaction, states have paid SSA approximately $200,000 to $250,000 per year. S. 1261 would waive those fees, and CBO estimates that SSA's fee collections would decrease, thus increasing net spending subject to appropriation by less than $500,000 annually over the 2010–2014 period.

Direct spending and revenues

S. 1261 would waive the fees that states currently pay to access certain DHS databases to check the eligibility of applicants for driver's licenses and identification cards. CBO estimates that this provision would decrease fee collections—and thus increase direct spending—by about $2 million annually over the 2010–2011 period.

DHS Fees. About half of the states use DHS's Systematic Alien Verification for Entitlements (SAVE) program for checking the immigration status of applicants for driver's licenses and identification cards. The department collected about $1 million in fees in 2009 from those states. In 2010 and subsequent years, however, we expect greater collections as more jurisdictions use the SAVE program. Based on information from the department, CBO estimates that enacting S. 1261 would decrease fee collections by roughly $2 million annually over the 2010–2011 period.

DHS periodically reviews its fees for providing certain services and sets fees sufficient to ensure the recovery of the full costs of

providing all such services, including the costs of services provided without charge to certain applicants. DHS is now completing a fee review; CBO assumes that this fee adjustment would be unaffected by S. 1261 and that DHS would raise fees as necessary sometime in 2011 to offset the additional costs resulting from enactment of S. 1261. In that case, the bill would have no significant net effect on DHS spending after fiscal year 2011.

Other Provisions. In addition, S. 1261 could increase collections of criminal fines for violations of the bill's provisions relating to the misuse of data on driver's licenses and identification cards. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and subsequently spent without further appropriation. CBO estimates that any increases in revenues and direct spending would not be significant in any year.

Estimated impact on state, local, and tribal governments: S. 1261 contains intergovernmental mandates as defined in UMRA. The bill would require states to issue public notices about their security and privacy policies that include information about how personally identifiable information is used, stored, accessed, and shared. The bill also would require states to have a process that would allow individuals to access, amend, and correct their information. Information from groups representing state governments indicates that most states currently have such policies and procedures, though some may need to be revised. Therefore, CBO estimates that the cost to states of those requirements would be well below the threshold established in UMRA for intergovernmental mandates ($69 million in 2009, adjusted annually for inflation).

Other provisions of the bill would benefit state, local, and tribal governments. The bill would repeal the requirements of the REAL ID Act and replace them with more flexible requirements for issuing compliant driver's licenses and identification cards. The bill also would authorize appropriations that could be used to pay for those requirements, and it would prohibit the federal government from charging fees to states to access the SAVE and SSOLV data systems.

Estimated impact on the private sector: S. 1261 would impose a private-sector mandate as defined in UMRA by prohibiting persons from scanning the information contained in the machine-readable component of a driver's license or identification card and storing, reselling, sharing, or trading that information. The bill also would prohibit tracking the use of a driver's license or identification card. According to the FTC and industry sources, few private entities currently scan driver's licenses, and for those that do, the costs of changing that practice would be minimal. Therefore, CBO expects that the cost of complying with the mandate would fall below the annual threshold established in UMRA for private-sector mandates ($139 million in 2009, adjusted annually for inflation).

Estimate prepared by: Federal costs: Mark Grabowicz (DHS) and David Rafferty (SSA); Impact on State, local, and Tribal Governments: Melissa Merrell; Impact on the private sector: Marin Randall.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the following changes in existing law made by the bill, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

EMERGENCY SUPPLEMENTAL APPROPRIATIONS ACT FOR DEFENSE, THE GLOBAL WAR ON TERROR, AND TSUNAMI RELIEF, 2005

(Public Law 109–13)

* * * * * * *

DIVISION B—REAL ID ACT OF 2005

* * * * * * *

[TITLE II—IMPROVED SECURITY FOR DRIVER'S LICENSES AND PERSONAL IDENTIFICATION CARDS

SEC. 201. DEFINITIONS.

In this title, the following definitions apply:

(1) DRIVER'S LICENSE.—The term "driver's license" means a motor vehicle operator's license, as defined in section 30301 of title 49, United States Code.

(2) IDENTIFICATION CARD.—The term "identification card" means a personal identification card, as defined in section 1028(d) of title 18, United States Code, issued by a State.

(3) OFFICIAL PURPOSE.—The term "official purpose" includes but is not limited to accessing Federal facilities, boarding federally regulated commercial aircraft, entering nuclear power plants, and any other purposes that the Secretary shall determine.

(4) SECRETARY.—The term "Secretary" means the Secretary of Homeland Security.

(5) STATE.—The term "State" means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

SEC. 202. MINIMUM DOCUMENT REQUIREMENTS AND ISSUANCE STANDARDS FOR FEDERAL RECOGNITION.

(a) MINIMUM STANDARDS FOR FEDERAL USE.—

(1) IN GENERAL.—Beginning 3 years after the date of the enactment of this division, a Federal agency may not accept, for any official purpose, a driver's license or identification card issued by a State to any person unless the State is meeting the requirements of this section.

(2) STATE CERTIFICATIONS.—The Secretary shall determine whether a State is meeting the requirements of this section based on certifications made by the State to the Secretary.

Such certifications shall be made at such times and in such manner as the Secretary, in consultation with the Secretary of Transportation, may prescribe by regulation.

(b) MINIMUM DOCUMENT REQUIREMENTS.—To meet the requirements of this section, a State shall include, at a minimum, the following information and features on each driver's license and identification card issued to a person by the State:

(1) The person's full legal name.

(2) The person's date of birth.

(3) The person's gender.

(4) The person's driver's license or identification card number.

(5) A digital photograph of the person.

(6) The person's address of principle residence.

(7) The person's signature.

(8) Physical security features designed to prevent tampering, counterfeiting, or duplication of the document for fraudulent purposes.

(9) A common machine-readable technology, with defined minimum data elements.

(c) MINIMUM ISSUANCE STANDARDS.—

(1) IN GENERAL.—To meet the requirements of this section, a State shall require, at a minimum, presentation and verification of the following information before issuing a driver's license or identification card to a person:

(A) A photo identity document, except that a non-photo identity document is acceptable if it includes both the person's full legal name and date of birth.

(B) Documentation showing the person's date of birth.

(C) Proof of the person's social security account number or verification that the person is not eligible for a social security account number.

(D) Documentation showing the person's name and address of principle residence.

(2) SPECIAL REQUIREMENTS.—

(A) IN GENERAL.—To meet the requirements of this section, a State shall comply with the minimum standards of this paragraph.

(B) EVIDENCE OF LAWFUL STATUS.—A State shall require, before issuing a driver's license or identification card to a person, valid documentary evidence that the person—

(i) is a citizen or national of the United States;

(ii) is an alien lawfully admitted for permanent or temporary residence in the United States;

(iii) has conditional permanent resident status in the United States;

(iv) has an approved application for asylum in the United States or has entered into the United States in refugee status;

(v) has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the United States;

(vi) has a pending application for asylum in the United States;

(vii) has a pending or approved application for temporary protected status in the United States;

(viii) has approved deferred action status; or

(ix) has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States.

(C) TEMPORARY DRIVER'S LICENSES AND IDENTIFICATION CARDS.—

(i) IN GENERAL.—If a person presents evidence under any of clauses (v) through (ix) of subparagraph (B), the State may only issue a temporary driver's license or temporary identification card to the person.

(ii) EXPIRATION DATE.—A temporary driver's license or temporary identification card issued pursuant to this subparagraph shall be valid only during the period of time of the applicant's authorized stay in the United States or, if there is no definite end to the period of authorized stay, a period of one year.

(iii) DISPLAY OF EXPIRATION DATE.—A temporary driver's license or temporary identification card issued pursuant to this subparagraph shall clearly indicate that it is temporary and shall state the date on which it expires.

(iv) RENEWAL.—A temporary driver's license or temporary identification card issued pursuant to this subparagraph may be renewed only upon presentation of valid documentary evidence that the status by which the applicant qualified for the temporary driver's license or temporary identification card has been extended by the Secretary of Homeland Security.

(3) VERIFICATION OF DOCUMENTS.—To meet the requirements of this section, a State shall implement the following procedures:

(A) Before issuing a driver's license or identification card to a person, the State shall verify, with the issuing agency, the issuance, validity, and completeness of each document required to be presented by the person under paragraph (1) or (2).

(B) The State shall not accept any foreign document, other than an official passport, to satisfy a requirement of paragraph (1) or (2).

(C) Not later than September 11, 2005, the State shall enter into a memorandum of understanding with the Secretary of Homeland Security to routinely utilize the automated system known as Systematic Alien Verification for Entitlements, as provided for by section 404 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (110 Stat. 3009–664), to verify the legal presence status of a person, other than a United States citizen, applying for a driver's license or identification card.

(d) OTHER REQUIREMENTS.—To meet the requirements of this section, a State shall adopt the following practices in the issuance of driver's licenses and identification cards:

(1) Employ technology to capture digital images of identity source documents so that the images can be retained in electronic storage in a transferable format.

(2) Retain paper copies of source documents for a minimum of 7 years or images of source documents presented for a minimum of 10 years.

(3) Subject each person applying for a driver's license or identification card to mandatory facial image capture.

(4) Establish an effective procedure to confirm or verify a renewing applicant's information.

(5) Confirm with the Social Security Administration a social security account number presented by a person using the full social security account number. In the event that a social security account number is already registered to or associated with another person to which any State has issued a driver's license or identification card, the State shall resolve the discrepancy and take appropriate action.

(6) Refuse to issue a driver's license or identification card to a person holding a driver's license issued by another State without confirmation that the person is terminating or has terminated the driver's license.

(7) Ensure the physical security of locations where driver's licenses and identification cards are produced and the security of document materials and papers from which driver's licenses and identification cards are produced.

(8) Subject all persons authorized to manufacture or produce driver's licenses and identification cards to appropriate security clearance requirements.

(9) Establish fraudulent document recognition training programs for appropriate employees engaged in the issuance of driver's licenses and identification cards.

(10) Limit the period of validity of all driver's licenses and identification cards that are not temporary to a period that does not exceed 8 years.

(11) In any case in which the State issues a driver's license or identification card that does not satisfy the requirements of this section, ensure that such license or identification card—

(A) clearly states on its face that it may not be accepted by any Federal agency for federal identification or any other official purpose; and

(B) uses a unique design or color indicator to alert Federal agency and other law enforcement personnel that it may not be accepted for any such purpose.

(12) Provide electronic access to all other States to information contained in the motor vehicle database of the State.

(13) Maintain a State motor vehicle database that contains, at a minimum—

(A) all data fields printed on driver's licenses and identification cards issued by the State; and

(B) motor vehicle driver's histories, including motor vehicle violations, suspensions, and points on licenses.

SEC. 203. TRAFFICKING IN AUTHENTICATION FEATURES FOR USE IN FALSE IDENTIFICATION DOCUMENTS.

(a) CRIMINAL PENALTY.—Section 1028(a)(8) of title 18, United States Code, is amended by striking "false authentication features" and inserting "false or actual authentication features".

(b) USE OF FALSE DRIVER'S LICENSE AT AIRPORTS.—

(1) IN GENERAL.—The Secretary shall enter, into the appropriate aviation security screening database, appropriate information regarding any person convicted of using a false driver's license at an airport (as such term is defined in section 40102 of title 49, United States Code).

(2) FALSE DEFINED.—In this subsection, the term "false" has the same meaning such term has under section 1028(d) of title 18, United States Code.

SEC. 204. GRANTS TO STATES.

(a) IN GENERAL.—The Secretary may make grants to a State to assist the State in conforming to the minimum standards set forth in this title.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for each of the fiscal years 2005 through 2009 such sums as may be necessary to carry out this title.

SEC. 205. AUTHORITY.

(a) PARTICIPATION OF SECRETARY OF TRANSPORTATION AND STATES.—All authority to issue regulations, set standards, and issue grants under this title shall be carried out by the Secretary, in consultation with the Secretary of Transportation and the States.

(b) EXTENSIONS OF DEADLINES.—The Secretary may grant to a State an extension of time to meet the requirements of section 202(a)(1) if the State provides adequate justification for noncompliance.

SEC. 206. REPEAL.

Section 7212 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458) is repealed.

SEC. 207. LIMITATION ON STATUTORY CONSTRUCTION.

Nothing in this title shall be construed to affect the authorities or responsibilities of the Secretary of Transportation or the States under chapter 303 of title 49, United States Code.]

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UNITED STATES CODE

TITLE 6. DOMESTIC SECURITY

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CHAPTER 1. HOMELAND SECURITY ORGANIZATION

SUBCHAPTER IV. DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY

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Subtitle E—Improved Security for Driver's Licenses and Personal Identification Cards

SEC. 241. DEFINITIONS.

In this subtitle:

(1) DRIVER'S LICENSE.—The term 'driver's license' means a motor vehicle operator's license, as defined in section 30301 of title 49, United States Code.

(2) IDENTIFICATION CARD.—The term 'identification card' means a personal identification card, as defined in section 1028(d) of title 18, United States Code, issued by a State.

(3) MATERIALLY COMPLIANT.—A State is 'materially compliant' if the State has certified to the Secretary that the State has commenced issuing driver's licenses and identification cards that are compliant with the requirements of this subtitle.

(4) OFFICIAL PURPOSE.—The term 'official purpose' means—

(A) accessing Federal facilities that contain mission functions critical to homeland security, national security, or defense;

(B) accessing nuclear power plants; or

(C) boarding federally regulated commercial aircraft.

(5) SECRETARY.—The term 'Secretary' means the Secretary of Homeland Security.

(6) STATE.—The term 'State' means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

SEC. 242. MINIMUM DOCUMENT REQUIREMENTS AND ISSUANCE STANDARDS FOR FEDERAL RECOGNITION.

(a) MINIMUM STANDARDS FOR FEDERAL USE.—

(1) IN GENERAL.—Beginning 1 year after the date on which final regulations are issued to implement this subtitle, pursuant to section 5 of the PASS ID Act—

(A) a Federal agency may not accept, for any official purpose, a driver's license or identification card issued by a State to any person unless the State is materially compliant; and

(B) no person shall be denied boarding a commercial aircraft solely on the basis of failure to present a driver's license or identification card issued pursuant to this subtitle.

(2) AGENCY ACCEPTANCE.—Beginning 6 years after the date on which final regulations are issued to implement this subtitle,

pursuant to section 5 of the PASS ID Act, a Federal agency may not accept, for any official purpose, a driver's license or identification card unless the license or card complies with subsection (b).

(3) STATE CERTIFICATIONS.—The Secretary shall determine whether a State is meeting the requirements of this section based on certifications made by the State to the Secretary. Such certifications shall be made at such times and in such manner as the Secretary, in consultation with the Secretary of Transportation, may prescribe by regulation.

(4) CERTIFICATION OF OTHER IDENTIFICATION DOCUMENTS.—The Secretary may certify any driver's license or identification card, including an Enhanced Driver's License designated by the Secretary under section 7209 of the 9/11 Commission Implementation Act of 2004, as compliant with the requirements of this subtitle if the Secretary, after review, determines such license or card meets the requirements of this subtitle.

(b) MINIMUM DOCUMENT REQUIREMENTS.—To meet the requirements of this section, a State shall include, at a minimum, the following information and features on each driver's license and identification card issued to a person by the State:

(1) The person's legal name.

(2) The person's date of birth.

(3) The person's gender.

(4) The person's driver's license or identification card number.

(5) A digital photograph of the person.

(6) The person's address of principle residence, except—

(A) as provided for under section 827 of the Violence Against Women Act (Public Law 109–162); or

(B) for any individual who a State determines should be exempted from the requirement under this paragraph to protect the safety or security of the applicant.

(7) The person's signature.

(8) A combination of security features designed to protect the physical integrity of the document, including the prevention of tampering, counterfeiting, or duplication of the document for fraudulent purposes.

(9) A common machine-readable technology, containing the data elements available on the face of a driver's license or identification card. A person's social security number may not be included in these data elements.

(10) A unique symbol designated by the Secretary to indicate compliance with the requirements under this section.

(c) MINIMUM ISSUANCE STANDARDS.—

(1) IN GENERAL.—To meet the requirements of this section, for all driver's licenses and identification cards issued under this subtitle at least 1 year after the date on which final regulations are issued to implement this subtitle, pursuant to section 5 of the PASS ID Act, a State shall require, at a minimum, presentation and validation of the following information before issuing a driver's license or identification card to a person:

(A) A photo identity document, except that a non-photo identity document is acceptable if it includes both the person's full name and date of birth.

(B) Documentation showing the person's date of birth.

(C) Proof of the person's social security account number or verification that the person is not eligible for a social security account number.

(D) Documentation showing the person's name and address of principle residence.

(2) SPECIAL REQUIREMENTS.—

(A) IN GENERAL.—To meet the requirements of this section, a State shall comply with the minimum standards of this paragraph.

(B) EVIDENCE OF LAWFUL STATUS.—Before issuing a driver's license or identification card to a person, a State shall verify that the person—

(i) is a citizen or national of the United States;

(ii) has been granted lawful permanent residence in the United States;

(iii) has been granted asylum or withholding of removal, or has been admitted into the United States as a refugee;

(iv) has been granted temporary residence in the United States;

(v) has been paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)), subject to such exceptions as the Secretary, in the Secretary's unreviewable discretion, may prescribe for aliens paroled into the United States for prosecution or other categories of paroled aliens;

(vi) is a lawful nonimmigrant in the United States;

(vii) has a pending application for asylum or withholding of removal and has been granted employment authorization;

(viii) has been granted temporary protected status in the United States or has a pending application for temporary protective status and has been granted employment authorization;

(ix) has been granted deferred action status;

(x) has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States;

(xi) has otherwise been granted employment autsent in the United States, as determined by the Secretaryhorization in the United States; or

(xii) is otherwise an alien lawfully pre in the Secretary's unreviewable discretion.

(C) TEMPORARY DRIVER'S LICENSES AND IDENTIFICATION CARDS.—

(i) IN GENERAL.—If a person presents evidence under any of clauses (iv) through (xii) of subparagraph (B), the State may only issue a temporary driver's license or temporary identification card to the person that is valid for a time period ending not later than the expiration date of the applicant's authorized stay in the United States or, if there is no such expiration date, for a period not to exceed 1 year. The Secretary may, in the

Secretary's unreviewable discretion, authorize the issuance of temporary driver's licenses or temporary identification cards, for periods longer than 1 year, to employees of international organizations and to other nonimmigrant aliens who are authorized to remain in the United States for an indefinite period.

(ii) DISPLAY OF EXPIRATION DATE.—A temporary driver's license or temporary identification card issued pursuant to this subparagraph shall clearly state the date on which it expires.

(iii) RENEWAL.—A temporary driver's license or temporary identification card issued pursuant to this subparagraph may be renewed only upon verification of the applicant's current lawful status.

(3) VALIDATION OF DOCUMENTS.—To meet the requirements of this section, a State—

(A) shall not accept any foreign document, other than an official passport, to satisfy a requirement of paragraph (1) or (2); and

(B) not later than 1 year after the date on which final regulations are issued to implement this subtitle, pursuant to section 5 of the PASS ID Act, shall enter into a memorandum of understanding with the Secretary to routinely utilize the automated system known as Systematic Alien Verification for Entitlements established under section 121 of the Immigration Reform and Control Act of 1986 (Public Law 99–603), to verify the legal presence status of a person, other than a United States citizen or national, who is applying for a driver's license or identification card.

(d) OTHER REQUIREMENTS.—To meet the requirements of this section, a State shall adopt the following practices in the issuance of driver's licenses and identification cards:

(1)(A) Employ technology to capture digital images of identity source documents so that the images can be retained in electronic storage in a transferrable format for at least as long as the applicable driver's license or identification card is valid; or

(B) retain paper copies of source documents for at least as long as the applicable driver's license or identification card is valid.

(2) Subject each person who submits an application for a driver's license or identification card to mandatory facial image capture.

(3) Establish an effective procedure to confirm or verify a renewing applicant's information.

(4) Confirm with the Social Security Administration a social security account number presented by a person using the full social security account number. In the event that a social security account number is already registered to or associated with another person to which any State has issued a driver's license or identification card, the State may use any appropriate procedures to resolve nonmatches.

(5) Establish an effective procedure to confirm that a person submitting an application for a driver's license or identification card is terminating or has terminated any driver's license or

identification card issued pursuant to this section to such person by a State.

(6) Provide for the physical security of locations where driver's licenses and identification cards are produced and the security of document materials and papers from which driver's licenses and identification cards are produced.

(7) Establish appropriate administrative and physical safeguards to protect the security, confidentiality, and integrity of personally identifiable information collected and maintained at locations at which driver's licenses or identification documents are produced or stored, including—

(A) procedures to prevent the unauthorized access to, or use of, personally identifiable information;

(B) public notice of security and privacy policies, including the use, storage, access to, and sharing of personally identifiable information;

(C) the establishment of a process through which individuals may access, amend, and correct, as determined appropriate by the State, their own personally identifiable information.

(8) Subject all persons authorized to manufacture or produce driver's licenses and identification cards to appropriate security clearance requirements.

(9) Establish fraudulent document recognition and document validation training programs for appropriate employees engaged in the issuance of driver's licenses and identification cards.

(10) Limit the period of validity of all driver's licenses and identification cards that are not temporary to a period that does not exceed 8 years.

(e) EXCEPTIONS PROCESS.—

(1) IN GENERAL.—States shall establish an exceptions process to reasonably accommodate persons who, for extraordinary reasons beyond their control, are unable to present the necessary documents listed in subsection (c)(1).

(2) ALTERNATIVE DOCUMENTS.—Alternative documents accepted under an exceptions process established pursuant to paragraph (1) may not be used to demonstrate lawful presence under subsection (c)(2) unless such documents establish that the person is a citizen or national of the United States.

(3) REPORT.—States shall include a report on the use of exceptions made under this subsection, which shall not include any personally identifiable information, as a component of the certification required under subsection (a)(3).

(f) USE OF FEDERAL SYSTEMS.—States shall not be required to pay fees or other costs associated with the use of the automated systems known as Systematic Alien Verification for Entitlements and Social Security On-Line Verification, or any other Federal electronic system, in connection with the issuance of driver's licenses or identification cards, in accordance with this subtitle.

(g) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit a State from issuing driver's licenses and identification cards that do not comply with the requirements of this section.

SEC. 243. USE OF FALSE DRIVER'S LICENSE AT AIRPORTS.

(a) IN GENERAL.—The Secretary shall enter, into the appropriate aviation security screening database, appropriate information regarding any person convicted of using a false driver's license at an airport.

(b) DEFINITIONS.—In this section:

(1) AIRPORT.—The term 'airport' has the meaning given such term under section 40102 of title 49, United States Code.

(2) FALSE.—The term 'false' has the meaning given such term under section 1028(d) of title 18, United States Code.

SEC. 244. GRANTS TO STATES.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established a State Driver's License Enhancement Grant Program to award grants to assist States in conforming to the minimum standards set forth in this subtitle.

(2) DISTRIBUTION OF GRANTS.—The Secretary, through the Administrator of the Federal Emergency Management Agency, shall distribute grants awarded under this section to States that submit an application as follows:

(A) PROPORTIONAL ALLOCATION.—Not less than ⅔ of the amounts appropriated for grants under this section shall be allocated to each State in the ratio that—

(i) the number of driver's licenses and identification cards issued by such State in the most recently ended calendar year; bears to

(ii) the number of driver's licenses and identifications cards issued by all States in the most recently ended calendar year.

(B) REMAINING ALLOCATION.—The Secretary may allocate to States any amounts appropriated for grants under this section that are not allocated under subparagraph (A) in such manner as, in the Secretary's discretion, will most effectively assist in achieving the goals of this subtitle.

(C) MINIMUM ALLOCATION.—In allocating funds under this section, the Secretary shall ensure that for each fiscal year—

(i) except as provided under clause (ii), each State receives not less than an amount equal to 0.35 percent of the total funds appropriated for grants under this section for that fiscal year; and

(ii) American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands each receive not less than an amount equal to 0.08 percent of the total funds appropriated for grants under this section for that fiscal year.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary, for each of the fiscal years 2010 through 2015, such sums as may be necessary to carry out this section.

SEC. 245. STATE-TO-STATE ONE DRIVER, ONE LICENSE DEMONSTRATION PROJECT.

(a) ESTABLISHMENT.—The Secretary, in consultation with the Secretary of Transportation, shall establish a State-to-State 1 driver, 1 license demonstration project.

(b) PURPOSE.—The demonstration project established under this section shall include an evaluation of the feasibility of establishing an electronic system to verify that an applicant for a driver's license or identification card issued in accordance with this subtitle does not retain a driver's license or identification card issued in accordance with this subtitle by another State.

(c) REQUIREMENTS.—The demonstration project shall include a review of—

(1) the costs affiliated with establishing and maintaining an electronic records system;

(2) the security and privacy measures necessary to protect the integrity and physical security of driver's licenses; and

(3) the appropriate governance structure to ensure effective management of the electronic records system, including preventing the unauthorized use of information in the system, and ensuring the security and confidentiality of personally identifiable information.

(d) SAVINGS PROVISION.—Nothing in this section may be construed to—

(1) authorize the creation of a national database of driver's license information; or

(2) authorize States direct access to the motor vehicle database of another State.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for each of the fiscal years 2010 through 2012 such sums as may be necessary to carry out this section.

SEC. 246. AUTHORITY.

(a) PARTICIPATION OF SECRETARY OF TRANSPORTATION AND STATES.—All authority to issue regulations, set standards, and issue grants under this subtitle shall be carried out by the Secretary, in consultation with the Secretary of Transportation and the States.

(b) EXTENSIONS OF DEADLINES.—The Secretary may grant to a State an extension of time to meet the requirements of section 242(a)(1) if the State provides adequate justification for noncompliance.

SEC. 247. LIMITATION ON STATUTORY CONSTRUCTION.

"Nothing in this subtitle may be construed to—

(1) affect the authorities or responsibilities of the Secretary of Transportation or the States under chapter 303 of title 49, United States Code; or

(2) preempt State privacy laws that are more protective of personal privacy than the requirements of this subtitle or the standards or regulations promulgated to implement this subtitle, provided that such State laws are consistent with this subtitle and the regulations prescribed pursuant to this subtitle.

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TITLE 18. DOMESTIC SECURITY

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CHAPTER 123—PROHIBITION ON RELEASE AND USE OF CERTAIN PERSONAL INFORMATION FROM STATE MOTOR VEHICLE RECORDS

* * * * * * *

SEC. 2722. ADDITIONAL UNLAWFUL ACTS.

(c) COPYING INFORMATION FROM DRIVER'S LICENSES OR IDENTIFICATION CARDS.—It shall be unlawful for any person, knowingly and without lawful authority—

(1) IN GENERAL.—Except as provided in paragraph (2), and unless authorized by Federal, State, or local law, beginning 6 months after the date on which final regulations are issued under paragraph (2), it shall be unlawful for any person, knowingly and without lawful authority—

(A) to scan the information contained in the machine readable component of a driver's license or identification card; and

(B)(i) to resell, share or trade that information with any other third parties;

(ii) track the use of a driver's license or identification card; or

(iii) store the information collected.

(2) EXCEPTIONS.—

(A) IN GENERAL.—Not later than 2 years after the date of the enactment of the PASS ID Act, the Federal Trade Commission, after providing notice and an opportunity for public comment, shall issue final regulations that provide exceptions to the prohibition under paragraph (1) for acceptable uses of information derived from the machine readable component of a driver's license or identification card for purposes including preventing fraud, abuse, or criminal activity.

(B) ACCEPTABLE USES.—Acceptable uses under subparagraph (A) shall protect the privacy and security of the driver's license or identification card holder and shall include—

(i) scanning and sharing personal information for credit checks;

(ii) scanning and sharing, tracking, or storing personal information for law enforcement purposes;

(iii) scanning and storing information to prevent consumer fraud;

(iv) scanning and sharing the information between Federal, State, and local agencies, in accordance with section 552a of title 5, United States Code, and other laws relevant to the protection of the privacy of the individual; and

(v) scanning and using the information for a purpose for which the driver's license or identification card holder has given express written consent.";

* * * * * * *

SEC. 2724. CIVIL ACTIONS.

(a) CAUSE OF ACTION.—A person who knowingly obtains, discloses or uses personal information, from a motor vehicle record,

driver's license, or identification card for a purpose not permitted under this chapter shall be liable to the individual to whom the information pertains, who may bring a civil action in a United States district court.

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SEC. 2725. DEFINITIONS.

In this chapter—

[(1)**]** *(5)* "motor vehicle record" means any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles;

[(2)**]** *(6)* "person" means an individual, organization or entity, but does not include a State or agency thereof; *and*

[(3)**]** *(7)* "personal information" means information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver's status.

[(4)**]** *(3)* "highly restricted personal information" means an individual's photograph or image, social security number, medical or disability information; **[**and**]**

(4) "identification card" means a personal identification card, as defined in section 1028(d) of title 18, United States Code, issued by a State.

[(5)**]** *(1) "driver's license" means a motor vehicle operator's license, as defined in section 30301 of title 49, United States Code;"*

(2) "express consent" means consent in writing, including consent conveyed electronically that bears an electronic signature as defined in section 106(5) of Public Law 106–229.

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