

109TH CONGRESS
2^D SESSION

S. 4117

To repeal title II of the REAL ID Act of 2005, to reinstitute the section 7212 of the Intelligence Reform and Terrorism Prevention Act of 2004, which provides States additional regulatory flexibility and funding authorization to more rapidly produce tamper- and counterfeit-resistant driver's licenses and to protect privacy and civil liberties by providing interested stakeholders on a negotiated rulemaking with guidance to achieve improved 21st century licenses to improve national security.

IN THE SENATE OF THE UNITED STATES

DECEMBER 8, 2006

Mr. AKAKA (for himself and Mr. SUNUNU) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To repeal title II of the REAL ID Act of 2005, to reinstitute the section 7212 of the Intelligence Reform and Terrorism Prevention Act of 2004, which provides States additional regulatory flexibility and funding authorization to more rapidly produce tamper- and counterfeit-resistant driver's licenses and to protect privacy and civil liberties by providing interested stakeholders on a negotiated rulemaking with guidance to achieve improved 21st century licenses to improve national security.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Identification Security
3 Enhancement Act of 2006”.

4 **SEC. 2. REPEAL.**

5 Title II of the REAL ID Act of 2005 (division B of
6 Public Law 109–13; 49 U.S.C. 30301 note) is repealed.

7 **SEC. 3. DRIVER’S LICENSES AND PERSONAL IDENTIFICA-
8 TION CARDS.**

9 (a) **DEFINITIONS.**—In this section:

10 (1) **DRIVER’S LICENSE.**—The term “driver’s li-
11 cense” means a motor vehicle operator’s license (as
12 defined in section 30301(5) of title 49, United
13 States Code).

14 (2) **PERSONAL IDENTIFICATION CARD.**—The
15 term “personal identification card” means an identi-
16 fication document (as defined in section 1028(d)(3)
17 of title 18, United States Code) issued by a State.

18 (b) **STANDARDS FOR ACCEPTANCE BY FEDERAL
19 AGENCIES.**—

20 (1) **IN GENERAL.**—

21 (A) **LIMITATION ON ACCEPTANCE.**—No
22 Federal agency may accept, for any official pur-
23 pose, a driver’s license or personal identification
24 card newly issued by a State more than 2 years
25 after the promulgation of the minimum stand-
26 ards under paragraph (2) unless the driver’s li-

1 cense or personal identification card conforms
2 to such minimum standards.

3 (B) DATE FOR FULL CONFORMANCE.—

4 (i) IN GENERAL.—Except as provided
5 under clause (ii), beginning on the date
6 that is 5 years after the promulgation of
7 minimum standards under paragraph (2),
8 no Federal agency may accept, for any of-
9 ficial purpose, a driver’s license or personal
10 identification card issued by a State unless
11 such driver’s license or personal identifica-
12 tion card conforms to such minimum
13 standards.

14 (ii) ALTERNATIVE DATE FOR FULL
15 CONFORMANCE.—If the Secretary of
16 Homeland Security determines that it is
17 impracticable for States to replace all
18 State-issued driver’s licenses and personal
19 identification cards before the deadline set
20 forth in clause (i), the Secretary of Home-
21 land Security, in consultation with the Sec-
22 retary of Transportation, may set a later,
23 alternative deadline to the extent necessary
24 for States to complete such replacement
25 with reasonable efforts.

1 (C) STATE CERTIFICATION.—

2 (i) IN GENERAL.—Each State shall
3 certify to the Secretary of Homeland Secu-
4 rity that the State is in compliance with
5 the requirements of this section.

6 (ii) FREQUENCY.—Certifications
7 under clause (i) shall be made at such in-
8 tervals and in such a manner as the Sec-
9 retary of Homeland Security, with the con-
10 currence of the Secretary of Transpor-
11 tation, may prescribe by regulation.

12 (iii) AUDITS.—The Secretary of
13 Homeland Security may conduct periodic
14 audits of each State’s compliance with the
15 requirements of this section.

16 (2) MINIMUM STANDARDS.—Not later than 12
17 months after the date of enactment of this Act, the
18 Secretary of Homeland Security, in consultation
19 with the Secretary of Transportation, shall by regu-
20 lation, establish by minimum standards for driver’s
21 licenses or personal identification cards issued by a
22 State for use by Federal agencies for identification
23 purposes that shall include—

1 (A) standards for documentation required
2 as proof of identity of an applicant for a driv-
3 er's license or personal identification card;

4 (B) standards for the verifiability of docu-
5 ments used to obtain a driver's license or per-
6 sonal identification card;

7 (C) standards for the processing of appli-
8 cations for driver's licenses and personal identi-
9 fication cards to prevent fraud;

10 (D) standards for information to be in-
11 cluded on each driver's license or personal iden-
12 tification card, including—

13 (i) the person's full legal name;

14 (ii) the person's date of birth;

15 (iii) the person's gender;

16 (iv) the person's driver's license or
17 personal identification card number;

18 (v) a photograph of the person;

19 (vi) the person's address of principal
20 residence; and

21 (vii) the person's signature;

22 (E) standards for common machine-read-
23 able identity information to be included on each
24 driver's license or personal identification card,
25 including defined minimum data elements;

1 (F) security standards to ensure that driv-
2 er's licenses and personal identification cards
3 are—

4 (i) resistant to tampering, alteration,
5 or counterfeiting; and

6 (ii) capable of accommodating and en-
7 suring the security of a photograph or
8 other unique identifier; and

9 (G) a requirement that a State confiscate
10 a driver's license or personal identification card
11 if any component or security feature of the li-
12 cense or identification card is compromised.

13 (c) NEGOTIATED RULEMAKING.—

14 (1) IN GENERAL.—Before publishing the pro-
15 posed regulations required by subsection (b)(2) to
16 carry out this title, the Secretary of Homeland Secu-
17 rity shall establish a negotiated rulemaking process
18 pursuant to subchapter IV of chapter 5 of title 5,
19 United States Code (5 U.S.C. 561 et seq.).

20 (2) TIME REQUIREMENT.—The process de-
21 scribed in paragraph (1) shall be conducted in a
22 timely manner to ensure that—

23 (A) any recommendation for a proposed
24 rule or report—

1 (i) is provided to the Secretary of
2 Homeland Security not later than 9
3 months after the date of enactment of this
4 Act; and

5 (ii) includes an assessment of the ben-
6 efits and costs of the recommendation; and

7 (B) a final rule is promulgated not later
8 than 12 months after the date of enactment of
9 this Act.

10 (3) REPRESENTATION ON NEGOTIATED RULE-
11 MAKING COMMITTEE.—Any negotiated rulemaking
12 committee established by the Secretary of Homeland
13 Security pursuant to paragraph (1) shall include
14 equal numbers of representatives from—

15 (A) among State offices that issue driver's
16 licenses or personal identification cards;

17 (B) among State elected officials;

18 (C) the Department of Transportation;

19 and

20 (D) among interested parties, including ex-
21 perts in privacy protection, experts in civil lib-
22 erties and protection of constitutional rights,
23 and experts in immigration law.

24 (4) CONTENT OF REGULATIONS.—The regula-
25 tions required by subsection (b)(2)—

1 (A) shall facilitate communication between
2 the chief driver licensing official of a State, an
3 appropriate official of a Federal agency and
4 other relevant officials, to verify the authen-
5 ticity of documents, as appropriate, issued by
6 such Federal agency or entity and presented to
7 prove the identity of an individual;

8 (B) may not infringe on a State's power to
9 set criteria concerning what categories of indi-
10 viduals are eligible to obtain a driver's license
11 or personal identification card from that State;

12 (C) may not require a State to comply with
13 any such regulation that conflicts with or other-
14 wise interferes with the full enforcement of
15 State criteria concerning the categories of indi-
16 viduals that are eligible to obtain a driver's li-
17 cense or personal identification card from that
18 State;

19 (D) may not require a single design to
20 which driver's licenses or personal identification
21 cards issued by all States must conform; and

22 (E) shall include procedures and require-
23 ments to protect the privacy rights of individ-
24 uals who apply for and hold driver's licenses
25 and personal identification cards.

1 (F) shall include procedures and require-
2 ments to protect the federal and state constitu-
3 tional rights and civil liberties of individuals
4 who apply for and hold driver's licenses and
5 personal identification cards;

6 (G) shall not permit the transmission of
7 any personally identifiable information except
8 for in encrypted format;

9 (H) shall provide individuals with proce-
10 dural and substantive due process, including
11 promulgating rules and rights of appeal, to
12 challenge errors in data records contained with-
13 in the databases created to implement this Act;

14 (I) shall not permit private entities to scan
15 the information contained on the face of a li-
16 cense, or in the machine readable component of
17 the license, and resell, share or trade that infor-
18 mation with any other third parties, nor shall
19 private entities be permitted to store the infor-
20 mation collected for any other than fraud pre-
21 vention purposes;

22 (J) shall not preempt state privacy laws
23 that are more protective of personal privacy
24 than the standards, or regulations promulgated
25 to implement this Act; and

1 (K) shall neither permit nor require
2 verification of birth certificates until a nation-
3 wide system is designed to facilitate such
4 verification.

5 (d) GRANTS TO STATES.—

6 (1) ASSISTANCE IN MEETING FEDERAL STAND-
7 ARDS.—Beginning on the date a final regulation is
8 promulgated under subsection (b)(2), the Secretary
9 of Homeland Security shall award grants to States
10 to assist them in conforming to the minimum stand-
11 ards for driver’s licenses and personal identification
12 cards set forth in the regulation.

13 (2) ALLOCATION OF GRANTS.—The Secretary
14 of Homeland Security shall award grants to States
15 under this subsection based on the proportion that
16 the estimated average annual number of driver’s li-
17 censes and personal identification cards issued by a
18 State applying for a grant bears to the average an-
19 nual number of such documents issued by all States.

20 (3) MINIMUM ALLOCATION.—Notwithstanding
21 paragraph (2), each State shall receive not less than
22 0.5 percent of the grant funds made available under
23 this subsection.

24 (4) SEPARATE FUNDING.—Funds appropriated
25 for grants under this section may not be commingled

1 with other grant funds administered by the Depart-
2 ment of Homeland Security and may not be used for
3 any purpose other than the purpose set forth in
4 paragraph (1).

5 (e) EXTENSION OF EFFECTIVE DATE.—The Sec-
6 retary of Homeland Security may extend the date specified
7 under subsection (b)(1)(A) for up to 2 years for driver’s
8 licenses issued by a State if the Secretary determines that
9 the State made reasonable efforts to comply with the date
10 under such subsection but was unable to do so.

11 **SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

12 There are authorized to be appropriated to the Sec-
13 retary of Homeland Security \$300,000,000 for each of the
14 fiscal years 2007 through 2013 to carry out this Act.

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