

111TH CONGRESS
1ST SESSION

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.

IN THE SENATE OF THE UNITED STATES

JUNE 15, 2009

Mr. AKAKA (for himself, Mr. VOINOVICH, Mr. LEAHY, Mr. TESTER, Mr. BAUCUS, and Mr. CARPER) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

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.

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 “Providing for Addi-
3 tional Security in States’ Identification Act of 2009” or
4 the “PASS ID Act”.

5 **SEC. 2. REPEAL.**

6 Title II of the REAL ID Act of 2005 (Division B
7 of Public Law 109–13) is repealed.

8 **SEC. 3. IDENTIFICATION SECURITY.**

9 (a) IN GENERAL.—Title II of the Homeland Security
10 Act of 2002 (6 U.S.C. 121 et seq.) is amended by adding
11 at the end the following:

12 **“Subtitle E—Improved Security for
13 Driver’s Licenses and Personal
14 Identification Cards**

15 **“SEC. 241. DEFINITIONS.**

16 “In this subtitle:

17 “(1) DRIVER’S LICENSE.—The term ‘driver’s li-
18 cense’ means a motor vehicle operator’s license, as
19 defined in section 30301 of title 49, United States
20 Code.

21 “(2) IDENTIFICATION CARD.—The term ‘identi-
22 fication card’ means a personal identification card,
23 as defined in section 1028(d) of title 18, United
24 States Code, issued by a State.

25 “(3) MATERIALLY COMPLIANT.—A State is
26 ‘materially compliant’ if the State has certified to

1 the Secretary that the State has commenced issuing
 2 driver’s licenses and identification cards that are
 3 compliant with the requirements of this subtitle.

4 “(4) OFFICIAL PURPOSE.—The term ‘official
 5 purpose’ means—

6 “(A) accessing Federal facilities that con-
 7 tain mission functions critical to homeland se-
 8 curity, national security, or defense;

9 “(B) accessing nuclear power plants; or

10 “(C) boarding federally regulated commer-
 11 cial aircraft.

12 “(5) SECRETARY.—The term ‘Secretary’ means
 13 the Secretary of Homeland Security.

14 “(6) STATE.—The term ‘State’ means a State
 15 of the United States, the District of Columbia, Puer-
 16 to Rico, the Virgin Islands, Guam, American Samoa,
 17 and the Commonwealth of the Northern Mariana Is-
 18 lands.

19 **“SEC. 242. MINIMUM DOCUMENT REQUIREMENTS AND**
 20 **ISSUANCE STANDARDS FOR FEDERAL REC-**
 21 **OGNITION.**

22 “(a) MINIMUM STANDARDS FOR FEDERAL USE.—

23 “(1) IN GENERAL.—Beginning 1 year after the
 24 date on which final regulations are issued to imple-

1 ment this subtitle, pursuant to section 5 of the
2 PASS ID Act—

3 “(A) a Federal agency may not accept, for
4 any official purpose, a driver’s license or identi-
5 fication card issued by a State to any person
6 unless the State is materially compliant; and

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

11 “(2) AGENCY ACCEPTANCE.—Beginning 6 years
12 after the date on which final regulations are issued
13 to implement this subtitle, pursuant to section 5 of
14 the PASS ID Act, a Federal agency may not accept,
15 for any official purpose, a driver’s license or identi-
16 fication card unless the license or card complies with
17 subsection (b).

18 “(3) STATE CERTIFICATIONS.—The Secretary
19 shall determine whether a State is meeting the re-
20 quirements of this section based on certifications
21 made by the State to the Secretary. Such certifi-
22 cations shall be made at such times and in such
23 manner as the Secretary, in consultation with the
24 Secretary of Transportation, may prescribe by regu-
25 lation.

1 “(4) CERTIFICATION OF OTHER IDENTIFICA-
2 TION DOCUMENTS.—The Secretary may certify any
3 driver’s license or identification card, including an
4 Enhanced Driver’s License designated by the Sec-
5 retary under section 7209 of the 9/11 Commission
6 Implementation Act of 2004, as compliant with the
7 requirements of this subtitle if the Secretary, after
8 review, determines such license or card meets the re-
9 quirements of this subtitle.

10 “(b) MINIMUM DOCUMENT REQUIREMENTS.—To
11 meet the requirements of this section, a State shall in-
12 clude, at a minimum, the following information and fea-
13 tures on each driver’s license and identification card
14 issued to a person by the State:

15 “(1) The person’s legal name.

16 “(2) The person’s date of birth.

17 “(3) The person’s gender.

18 “(4) The person’s driver’s license or identifica-
19 tion card number.

20 “(5) A digital photograph of the person.

21 “(6) The person’s address of principal resi-
22 dence, except—

23 “(A) as provided for under section 827 of
24 the Violence Against Women Act (Public Law
25 109–162); or

1 “(B) for any individual who a State deter-
2 mines should be exempted from the requirement
3 under this paragraph to protect the safety or
4 security of the applicant.

5 “(7) The person’s signature.

6 “(8) A combination of security features de-
7 signed to protect the physical integrity of the docu-
8 ment, including the prevention of tampering, coun-
9 terfeiting, or duplication of the document for fraudu-
10 lent purposes.

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

16 “(10) A unique symbol designated by the Sec-
17 retary to indicate compliance with the requirements
18 under this section.

19 “(c) MINIMUM ISSUANCE STANDARDS.—

20 “(1) IN GENERAL.—To meet the requirements
21 of this section, for all driver’s licenses and identifica-
22 tion cards issued under this subtitle at least 1 year
23 after the date on which final regulations are issued
24 to implement this subtitle, pursuant to section 5 of
25 the PASS ID Act, a State shall require, at a min-

1 imum, presentation and validation of the following
2 information before issuing a driver's license or iden-
3 tification card to a person:

4 “(A) A photo identity document, except
5 that a non-photo identity document is accept-
6 able if it includes both the person's full name
7 and date of birth.

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

10 “(C) Proof of the person's social security
11 account number or verification that the person
12 is not eligible for a social security account num-
13 ber.

14 “(D) Documentation showing the person's
15 name and address of principal residence.

16 “(2) SPECIAL REQUIREMENTS.—

17 “(A) IN GENERAL.—To meet the require-
18 ments of this section, a State shall comply with
19 the minimum standards of this paragraph.

20 “(B) EVIDENCE OF LAWFUL STATUS.—Be-
21 fore issuing a driver's license or identification
22 card to a person, a State shall verify that the
23 person—

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

1 “(ii) has been granted lawful perma-
2 nent residence in the United States;

3 “(iii) has been granted asylum or
4 withholding of removal, or has been admit-
5 ted into the United States as a refugee;

6 “(iv) has been granted temporary resi-
7 dence in the United States;

8 “(v) has been paroled into the United
9 States under section 212(d)(5) of the Im-
10 migration and Nationality Act (8 U.S.C.
11 1182(d)(5)), subject to such exceptions as
12 the Secretary, in the Secretary’s
13 unreviewable discretion, may prescribe for
14 aliens paroled into the United States for
15 prosecution or other categories of paroled
16 aliens;

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

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

22 “(viii) has been granted temporary
23 protected status in the United States or
24 has a pending application for temporary

1 protective status and has been granted em-
2 ployment authorization;

3 “(ix) has been granted deferred action
4 status;

5 “(x) has a pending application for ad-
6 justment of status to that of an alien law-
7 fully admitted for permanent residence in
8 the United States or conditional perma-
9 nent resident status in the United States;

10 “(xi) has otherwise been granted em-
11 ployment authorization in the United
12 States; or

13 “(xii) is otherwise an alien lawfully
14 present in the United States, as deter-
15 mined by the Secretary in the Secretary’s
16 unreviewable discretion.

17 “(C) TEMPORARY DRIVER’S LICENSES AND
18 IDENTIFICATION CARDS.—

19 “(i) IN GENERAL.—If a person pre-
20 sents evidence under any of clauses (iv)
21 through (xii) of subparagraph (B), the
22 State may only issue a temporary driver’s
23 license or temporary identification card to
24 the person that is valid for a time period
25 ending not later than the expiration date

1 of the applicant's authorized stay in the
2 United States or, if there is no such expi-
3 ration date, for a period not to exceed 1
4 year. The Secretary may, in the Sec-
5 retary's unreviewable discretion, authorize
6 the issuance of temporary driver's licenses
7 or temporary identification cards, for peri-
8 ods longer than 1 year, to employees of
9 international organizations and to other
10 nonimmigrant aliens who are authorized to
11 remain in the United States for an indefi-
12 nite period.

13 “(ii) DISPLAY OF EXPIRATION
14 DATE.—A temporary driver's license or
15 temporary identification card issued pursu-
16 ant to this subparagraph shall clearly state
17 the date on which it expires.

18 “(iii) RENEWAL.—A temporary driv-
19 er's license or temporary identification
20 card issued pursuant to this subparagraph
21 may be renewed only upon verification of
22 the applicant's current lawful status.

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

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

4 “(B) not later than 1 year after the date
5 on which final regulations are issued to imple-
6 ment this subtitle, pursuant to section 5 of the
7 PASS ID Act, shall enter into a memorandum
8 of understanding with the Secretary to rou-
9 tinely utilize the automated system known as
10 Systematic Alien Verification for Entitlements
11 established under section 121 of the Immigra-
12 tion Reform and Control Act of 1986 (Public
13 Law 99–603), to verify the legal presence sta-
14 tus of a person, other than a United States cit-
15 izen or national, who is applying for a driver’s
16 license or identification card.

17 “(d) OTHER REQUIREMENTS.—To meet the require-
18 ments of this section, a State shall adopt the following
19 practices in the issuance of driver’s licenses and identifica-
20 tion cards:

21 “(1)(A) Employ technology to capture digital
22 images of identity source documents so that the im-
23 ages can be retained in electronic storage in a
24 transferrable format for at least as long as the appli-

1 cable driver's license or identification card is valid;
2 or

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

6 “(2) Subject each person who submits an appli-
7 cation for a driver's license or identification card to
8 mandatory facial image capture.

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

11 “(4) Confirm with the Social Security Adminis-
12 tration a social security account number presented
13 by a person using the full social security account
14 number. In the event that a social security account
15 number is already registered to or associated with
16 another person to which any State has issued a driv-
17 er's license or identification card, the State may use
18 any appropriate procedures to resolve nonmatches.

19 “(5) Establish an effective procedure to confirm
20 that a person submitting an application for a driv-
21 er's license or identification card is terminating or
22 has terminated any driver's license or identification
23 card issued pursuant to this section to such person
24 by a State.

1 “(6) Provide for the physical security of loca-
2 tions where driver’s licenses and identification cards
3 are produced and the security of document materials
4 and papers from which driver’s licenses and identi-
5 fication cards are produced.

6 “(7) Establish appropriate administrative and
7 physical safeguards to protect the security, confiden-
8 tiality, and integrity of personally identifiable infor-
9 mation collected and maintained at locations at
10 which driver’s licenses or identification documents
11 are produced or stored, including—

12 “(A) procedures to prevent the unauthor-
13 ized access to, or use of, personally identifiable
14 information;

15 “(B) public notice of security and privacy
16 policies, including the use, storage, access to,
17 and sharing of personally identifiable informa-
18 tion;

19 “(C) the establishment of a process
20 through which individuals may access, amend,
21 and correct, as determined appropriate by the
22 State, their own personally identifiable informa-
23 tion.

1 “(8) Subject all persons authorized to manufac-
2 ture or produce driver’s licenses and identification
3 cards to appropriate security clearance requirements.

4 “(9) Establish fraudulent document recognition
5 and document validation training programs for ap-
6 propriate employees engaged in the issuance of driv-
7 er’s licenses and identification cards.

8 “(10) Limit the period of validity of all driver’s
9 licenses and identification cards that are not tem-
10 porary to a period that does not exceed 8 years.

11 “(e) EXCEPTIONS PROCESS.—

12 “(1) IN GENERAL.—States shall establish an
13 exceptions process to reasonably accommodate per-
14 sons who, for extraordinary reasons beyond their
15 control, are unable to present the necessary docu-
16 ments listed in subsection (c)(1).

17 “(2) ALTERNATIVE DOCUMENTS.—Alternative
18 documents accepted under an exceptions process es-
19 tablished pursuant to paragraph (1) may not be
20 used to demonstrate lawful presence under sub-
21 section (c)(2) unless such documents establish that
22 the person is a citizen or national of the United
23 States.

24 “(3) REPORT.—States shall include a report on
25 the use of exceptions made under this subsection,

1 which shall not include any personally identifiable
2 information, as a component of the certification re-
3 quired under subsection (a)(3).

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

11 “(g) RULE OF CONSTRUCTION.—Nothing in this sec-
12 tion shall be construed to prohibit a State from issuing
13 driver’s licenses and identification cards that do not com-
14 ply with the requirements of this section.

15 **“SEC. 243. USE OF FALSE DRIVER’S LICENSE AT AIRPORTS.**

16 “(a) IN GENERAL.—The Secretary shall enter, into
17 the appropriate aviation security screening database, ap-
18 propriate information regarding any person convicted of
19 using a false driver’s license at an airport.

20 “(b) DEFINITIONS.—In this section:

21 “(1) AIRPORT.—The term ‘airport’ has the
22 meaning given such term under section 40102 of
23 title 49, United States Code.

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

4 **“SEC. 244. GRANTS TO STATES.**

5 “(a) ESTABLISHMENT.—

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

10 “(2) DISTRIBUTION OF GRANTS.—The Sec-
11 retary, through the Administrator of the Federal
12 Emergency Management Agency, shall distribute
13 grants awarded under this section to States that
14 submit an application as follows:

15 “(A) PROPORTIONAL ALLOCATION.—Not
16 less than $\frac{2}{3}$ of the amounts appropriated for
17 grants under this section shall be allocated to
18 each State in the ratio that—

19 “(i) the number of driver’s licenses
20 and identification cards issued by such
21 State in the most recently ended calendar
22 year; bears to

23 “(ii) the number of driver’s licenses
24 and identifications cards issued by all

1 States in the most recently ended calendar
2 year.

3 “(B) REMAINING ALLOCATION.—The Sec-
4 retary may allocate to States any amounts ap-
5 propriated for grants under this section that
6 are not allocated under subparagraph (A) in
7 such manner as, in the Secretary’s discretion,
8 will most effectively assist in achieving the goals
9 of this subtitle.

10 “(C) MINIMUM ALLOCATION.—In allo-
11 cating funds under this section, the Secretary
12 shall ensure that for each fiscal year—

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

18 “(ii) American Samoa, the Common-
19 wealth of the Northern Mariana Islands,
20 Guam, and the Virgin Islands each receive
21 not less than an amount equal to 0.08 per-
22 cent of the total funds appropriated for
23 grants under this section for that fiscal
24 year.

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

5 **“SEC. 245. STATE-TO-STATE ONE DRIVER, ONE LICENSE**
6 **DEMONSTRATION PROJECT.**

7 “(a) ESTABLISHMENT.—The Secretary, in consulta-
8 tion with the Secretary of Transportation, shall establish
9 a State-to-State 1 driver, 1 license demonstration project.

10 “(b) PURPOSE.—The demonstration project estab-
11 lished under this section shall include an evaluation of the
12 feasibility of establishing an electronic system to verify
13 that an applicant for a driver’s license or identification
14 card issued in accordance with this subtitle does not retain
15 a driver’s license or identification card issued in accord-
16 ance with this subtitle by another State.

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

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

21 “(2) the security and privacy measures nec-
22 essary to protect the integrity and physical security
23 of driver’s licenses; and

24 “(3) the appropriate governance structure to
25 ensure effective management of the electronic

1 records system, including preventing the unauthor-
2 ized use of information in the system, and ensuring
3 the security and confidentiality of personally identifi-
4 able information.

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

7 “(1) authorize the creation of a national data-
8 base of driver’s license information; or

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

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

15 **“SEC. 246. AUTHORITY.**

16 “(a) PARTICIPATION OF SECRETARY OF TRANSPOR-
17 TATION AND STATES.—All authority to issue regulations,
18 set standards, and issue grants under this subtitle shall
19 be carried out by the Secretary, in consultation with the
20 Secretary of Transportation and the States.

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

1 **“SEC. 247. LIMITATION ON STATUTORY CONSTRUCTION.**

2 “Nothing in this subtitle may be construed to—

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

6 “(2) preempt State privacy laws that are more
7 protective of personal privacy than the requirements
8 of this subtitle or the standards or regulations pro-
9 mulgated to implement this subtitle, provided that
10 such State laws are consistent with this subtitle and
11 the regulations prescribed pursuant to this sub-
12 title.”.

13 (b) **TECHNICAL AMENDMENT.**—Section 1(b) of the
14 Homeland Security Act of 2002 (Public Law 107–296)
15 is amended by inserting after the item relating to section
16 235 the following:

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

“Sec. 241. Definitions.

“Sec. 242. Minimum document requirements and issuance standards for Fed-
eral recognition.

“Sec. 243. Use of false driver’s license at airports.

“Sec. 244. Grants to States.

“Sec. 245. State-to-State one driver, one license demonstration project.

“Sec. 246. Authority.

“Sec. 247. Limitation on statutory construction.”.

17 **SEC. 4. USE OF DRIVER’S LICENSE OR IDENTIFICATION**
18 **CARD DATA BY PRIVATE ENTITIES.**

19 Chapter 123 of title 18, United States Code is
20 amended—

1 (1) in section 2722, by adding at the end the
2 following:

3 “(c) COPYING INFORMATION FROM DRIVERS LI-
4 CENSES OR IDENTIFICATION CARDS.—It shall be unlawful
5 for any person, knowingly and without lawful authority—

6 “(1) to scan the information contained in the
7 machine readable component of a driver’s license or
8 identification card; or

9 “(2)(A) to resell, share or trade that informa-
10 tion with any other third parties;

11 “(B) track the use of a driver’s license or iden-
12 tification card; or

13 “(C) store the information collected.”;

14 (2) in section 2724(a), by inserting “driver’s li-
15 cense, or identification card,” after “motor vehicle
16 record,”;

17 (3) in section 2725—

18 (A) by redesignating paragraph (2) as
19 paragraph (6), and adding “and” at the end;

20 (B) by redesignating paragraph (3) as
21 paragraph (7);

22 (C) by redesignating paragraph (4) as
23 paragraph (3), and striking “and” at the end;

1 (D) by redesignating paragraph (5) as
2 paragraph (2), and striking the period at the
3 end and inserting a semicolon;

4 (E) by redesignating paragraph (1) as
5 paragraph (5);

6 (F) by inserting before paragraph (2), as
7 redesignated, the following:

8 “(1) ‘driver’s license’ means a motor vehicle op-
9 erator’s license, as defined in section 30301 of title
10 49, United States Code;”; and

11 (G) by inserting after paragraph (3), as re-
12 designated, the following:

13 “(4) ‘identification card’ means a personal iden-
14 tification card, as defined in section 1028(d) of title
15 18, United States Code, issued by a State.”.

16 **SEC. 5. RULEMAKING.**

17 (a) IN GENERAL.—Not later than 9 months after the
18 date of the enactment of this Act, the Secretary, after pro-
19 viding notice and an opportunity for public comment shall
20 issue final regulations to implement subtitle E of title II
21 of the Homeland Security Act of 2002, as added by section
22 3.

23 (b) CONTENT.—The regulations issued pursuant to
24 subsection (a)—

1 (1) shall include procedures and requirements
2 that—

3 (A) protect the privacy rights of individ-
4 uals who apply for and hold a driver’s license
5 or personal identification card;

6 (B) protect the constitutional rights and
7 civil liberties of individuals who apply for and
8 hold a driver’s licenses or personal identification
9 card;

10 (2) shall include procedures to protect any per-
11 sonally identifiable information electronically trans-
12 mitted;

13 (3) shall establish a process through which indi-
14 viduals may access, amend, and correct, as deter-
15 mined appropriate by the Secretary, their own per-
16 sonally identifiable information in any Federal data-
17 bases used in complying with this Act;

18 (4) may not require a single design or num-
19 bering system to which driver’s licenses or personal
20 identification cards issued by all States shall con-
21 form; and

22 (5) shall only apply to driver’s licenses or iden-
23 tification cards issued pursuant to subtitle E of title
24 II of the Homeland Security Act of 2002, as added
25 by section 3.

1 **SEC. 6. SAVINGS PROVISION.**

2 (a) EFFECT OF REPEAL.—Nothing in section 2 shall
3 affect the amendment or the repeal set forth in sections
4 203(a) and 206 of the REAL ID Act of 2005.

5 (b) EFFECT OF COMPLETED ADMINISTRATIVE AC-
6 TIONS.—Completed personnel actions, agreements, grants,
7 and contracts undertaken by an agency—

8 (1) shall not be affected by any provision of this
9 Act, or any amendment made by this Act; and

10 (2) shall continue in effect according to their
11 terms until amended, modified, superseded, termi-
12 nated, set aside, or revoked by an officer of the
13 United States, by a court of competent jurisdiction,
14 or by operation of law.

○