
Senate Communications and Technology Committee

Senator Rob Wonderling, Chairman

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Public Hearing The Federal REAL ID Act of 2005 and Senate Bill 1220 June 25, 2008

- 9:00 a.m. Senator Mike Folmer**
Prime sponsor of Senate Bill 1220
- 9:05 a.m. James Compton**
PA State Coordinator
The National Veterans Committee on Constitutional Affairs
- 9:20 a.m. Kurt J. Myers**
Deputy Secretary for Safety Administration
Pennsylvania Department of Transportation
- 9:50 a.m. Jeremy Meadows**
Senior Policy Director, State-Federal Relations Division
National Conference of State Legislatures
- 10:05 a.m. Betty Serian**
Principal & CEO
Serian Associates
- 10:20 a.m. Neil Berro**
Spokesman
Coalition for a Secure Driver's License
- 10:35 a.m. Andrew Hoover**
Community Organizer/Legislative Assistant
American Civil Liberties Union of Pennsylvania

Testimony of Senator Mike Folmer
Senate Communications & Technology Committee
9:00 a.m., Wednesday, June 25th
Hearing Room #1, North Office Building

Senator Wonderling and members of the Senate Communications & Technology Committee, thank you for the opportunity to talk about the problems of the federal REAL ID bill and my Senate Bill 1220, which would preclude the Commonwealth from having to comply with this federal mandate.

My main concern with the federal REAL ID law is that it violates both the United States Constitution and Pennsylvania's Constitution.

In the post September 11th world, there is a sense by some that we should forswear our right to privacy for a perceived sense of safety. I disagree. To quote Benjamin Franklin: "those who give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety."

My Senate Bill 1220, "the REAL ID and Biometric and Economic Privacy Act" is a companion bill to Representative Rohrer's House Bill 1351. Both bills would preclude Pennsylvania from having to comply with the federal REAL ID Act.

Eight other states have enacted similar legislation, including: Idaho, Montana, Maine, New Hampshire, South Carolina, Minnesota, Arizona, and Washington. In addition, a number of other states have passed non-binding resolutions expressing their opposition to REAL ID. I believe that Pennsylvania should take the stronger approach by enacting either SB 1220 or HB 1351 into law.

These legislative initiatives have brought together an interesting and formidable alliance of ideologically diverse interest groups spanning both the political spectrum of both the left and the right. Like me, these groups recognize that the REAL ID Act is not good public policy.

The federal REAL ID Act would mandate that the states make drivers' licenses national identification cards. Drivers' licenses that do not meet federal requirements would not be acceptable for a variety of federal purposes, such as boarding airplanes and entering federal facilities.

This unfunded federal mandate will impose heavy burdens on both the taxpayers and upon state government. Virginia estimates that its cost to comply with REAL ID will be approximately \$250 Million. No federal funds have been allocated to help offset these costs.

Beyond the costs of REAL ID, there are additional privacy issues. REAL ID also opens Pandora's Box to the potential for empowering the US Department of Homeland Security to mandate the collection of biometric data; things like retinal scans and face prints. Current law does not give government the power to fingerprint citizens without cause. Why should REAL ID be able to secure more detailed information without citizens' consent?

REAL ID also could lead to Radio Frequency Identification Chips (RFID) being inserted in every driver's license. However, REAL ID offers no controls on this information:

- What confidential data can be collected from drivers' licenses
- Where and how this information can be stored
- Who is authorized to obtain it, share it, and/or trade or sell it

REAL ID requires that personal data collected from each state's drivers be stored into a database that is linked to the department of motor vehicles of other states. Do you want all of your personal information be stored in one place where computer hackers and identity thieves can look for ways to tap into it?

Will REAL ID make us safer? I think not. And the price that we would have to bear would far exceed the perceived benefits. These costs include more government red tape, more bureaucracy, higher fees and higher taxes. It's just not worth it.

Identity information does not reveal anything about evil intent. Consider the worst act of terrorism on American soil prior to 9-11. It was committed by a decorated Gulf War veteran who regularly attended church with his father. His name was Timothy McVeigh and he murdered 168 people in the Alfred P. Murrah Building in Oklahoma City.

Terrorists are patient. They will do whatever it takes to legally maneuver around whatever roadblocks that we attempt to put in their paths. Then, they will strike.

Rather than compromising our rights for a perceived sense of security, I believe that we would be far better off to avail ourselves of the right to self protection. A vigilant society is a safe society.

We should not make the mistake of succumbing to a false hope of a national ID card that would strip away our precious privacy.

I will be happy to answer any questions that you may have. Thank you again for the opportunity to appear before you today.

Good morning, my name is Jim Compton. I am a retired Naval Officer of 25 years and am the Pennsylvania State Coordinator for the National Veterans Committee on Constitutional Affairs. I would like to thank Senator Wonderling and the Communications and Technology Committee for allowing me to speak this morning.

In January 1970, I took the following oath when I received my commission in the US Navy:

"I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."

I would like to explain why the Real ID Act of 2005 is an act of tyranny and how it is connected with the goals of the Security and Prosperity Partnership of North America. I'd also like to explain how it will not make us more safe but will, in fact, make us less secure. Just as King George abused the colonists, so will the Real ID Act of 2005 abuse our citizens today.

Our founding fathers believed in liberty and provided a Republican form of government to secure the blessings of liberty to their future generations. Article IV, Section 4 of the US Constitution states, "The United States shall guarantee to every State in this Union a Republican form of Government..."

In a Republican form of government, the supreme power resides with the people who elect representatives to govern by law. That law is the Constitution, and it limits the powers of those who govern. In other words, the Constitution is the rule book by which those governing govern.

In order to ensure that our Republican form of government stayed in place, our founding fathers wrote in Article VI of the US Constitution:

“The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution;...”

This oath ensures that no legislation of laws that violate our Constitution will be perpetrated on a freedom loving people because elected officials in the legislature and executive and judicial Officers will prevent unconstitutional law from being implemented. Of course, we know that there are individuals who do not honor their oaths.

In both the Federal and State Constitutions, certain civil liberties and rights are excepted out of the government’s powers. In the Federal Constitution, the first ten amendments and Article 1, Section 9, specifically identify areas where congress shall not legislate. In the Pennsylvania Constitution, Article I contains the Declaration of Rights and Section 25 of that Article clearly states that “To guard against the transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of

the general powers of government and shall forever remain inviolate.” That is a powerful statement of the people of this great Commonwealth.

The First Amendment of the US Constitution states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof....” Section 3 of Pennsylvania’s Declaration of Rights, titled “Religious Freedoms” specifically states “...no human authority can, in any case whatever, control or interfere with the rights of conscience,...”

Today, PennDOT refuses to renew or issue a new driver’s license to those of the Amish/Mennonite faith who do not have a Social Security Number because Real ID regulations require a SSN in the database.

Second, the Fourth Amendment states that “the right of the people to be secure in their persons... against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” Pennsylvania’s Declaration of Rights is very similar.

A digital photo converted into a biometric image is just like a fingerprint. It’s a face print. Unless an individual has committed a crime, and there is probable cause, and someone goes before a judge and affirms that he saw the individual do the dirty deed, and a judge signs a warrant, then, and only

then, does law enforcement or government have the power to take someone's face print.

What the Real ID Act and regulations are doing is taking a digital photo and converting it to a biometric image without the consent of the individual.

Third, the Constitution of the United States grants to the federal government the ability to make only seven mandates upon the States of the Union. The demands such as are contained in the federal Real ID Act of 2005 are not to be found among these limited mandates.

So it appears that our elected officials in Washington have violated their oath of office with respect to the First Amendment's religious clause, with respect to the Fourth Amendment right to privacy, and with respect to the powers granted to federal government via the US Constitution when they passed the Real ID Act of 2005.

On June 27, 2005, the Security and Prosperity Partnership of North America provided a "2005 Report to Leaders." This report was signed by representatives from Mexico, Canada, and the United States. The US representatives included Carlos Gutierrez, Michael Chertoff, and Condoleezza Rice. The working group reported under the "Biometrics and secure documentation vision" that, "We will devise a single, integrated global enrollment program for North American trusted traveler programs within the next 36 months." This report is available at www.spp.gov.

Per Mr. Myers testimony of February 21, 2008 in Philadelphia PennDOT has completed an upgrade of its photo technology and equipment at its

Photo License Centers across the Commonwealth. They are also using state of the art facial recognition technology which covertly a digital photo into a biometric image without the knowledge or permission of the individual.

The Real ID Act and associated regulations are part of the single integrated global enrollment program and our new or renewed driver's licenses and ID cards are being changed to enroll us into a global biometric database. This effort will create an enormous database with everything on our license, plus our Social Security Number, which our government will share with Mexico and Canada.

This biometric database will enable an operator of a CCTV camera to identify anyone walking on the street or peacefully assembled in protest of government policy.

This act punishes law-abiding citizens and also puts them at risk for identity thief, the fastest growing crime in the US today.

The Tenth Amendment to the United States Constitution states, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

In the very first Supreme Court decision, *Madison v Marbury*, the court stated with respect to the Constitution, "Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law

repugnant to the constitution is void, and that courts, as well as other departments, are bound by that instrument.”

We can clearly see that the Real ID Act of 2005 and the associated regulations are blatantly unconstitutional since they violate our right to religious freedom and privacy and the federal government is attempting to usurp the powers of the states. We the People of this great Commonwealth most strongly recommend that you stand up to the federal government and support our sister states in just saying NO to the Real ID Act of 2005 by supporting Senate Bill 1220 and sending it to the floor for a vote.

Thank you for your time.

James R. Compton III, CDR Retired, USN

Pennsylvania State Coordinator for the National Veterans Committee on
Constitutional Affairs

**TESTIMONY OF DEPUTY SECRETARY KURT MYERS
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION
SENATE BILL 1220/REAL ID ACT OF 2005
SENATE COMMUNICATIONS AND TECHNOLOGY COMMITTEE
JUNE 25, 2008**

Good morning. My name is Kurt Myers, and I am the Deputy Secretary for PennDOT's Safety Administration. On behalf of Secretary of Transportation Allen Biehler, I appreciate the opportunity to testify today on Senate Bill 1220 as it relates to the REAL ID Act of 2005 and the use of biometric technology.

As background, the REAL ID Act of 2005 is a federal effort to enhance the integrity and security of state-issued driver's licenses and photo identification cards, which is intended to aid in fighting terrorism and further mitigating the risk for fraud. The U.S. Department of Homeland Security released the final REAL ID regulations on January 11, 2008. PennDOT immediately began an in-depth analysis of the regulations to identify and discuss potential options, the costs of those options and the impact to the citizens of the Commonwealth.

First, let me assure you that Pennsylvania has not made a final decision regarding REAL ID. Governor Rendell, along with other governors, has participated in REAL ID discussions with U.S. DHS Secretary Michael Chertoff. Many governors have made it clear that funding is a major barrier to the future of REAL ID and that the federal government must fully fund REAL ID or their states will not participate. To that end, Arizona's legislature recently voted not to implement REAL ID. At this time, approximately 10 states have voted not to participate in REAL ID.

The REAL ID Act was proposed to go into effect May 11, 2008, but U.S. DHS granted an initial extension to all states, the District of Columbia and U.S. territories, which enables individuals to continue using their current driver's licenses or photo identification cards for federal official purposes, which include boarding a commercial aircraft, entering a nuclear power plant or federal facility that requires identification, until **December 31, 2009**.

Furthermore, if states demonstrate to DHS they are in "material compliance" with the federal regulations by **October 11, 2009**, they can receive a second extension until **May 10, 2011**. Pennsylvania already meets 11 out of the 18

material compliance requirements. Some have suggested Pennsylvania meets 14 out of 18 material compliance requirements, but there are three requirements we meet partially not fully. The 11 requirements Pennsylvania does meet make sense and are cost effective measures put into place long before the final REAL ID regulations were released, in order to maintain the integrity and enhance the security of the driver's license/identification card issuance process. Two of the material compliance requirements Pennsylvania meets partially; one is a major process change to the way PennDOT conducts business currently; and the remaining four requirements cannot be completed unless a commitment is made to participate in the REAL ID program.

If Pennsylvania implements REAL ID, approximately 4.1 million driver's license and identification card holders must visit a PennDOT Driver License Center to be re-credentialed and issued a REAL ID by **December 1, 2014**. An additional 5.4 million driver's license and photo ID card holders must visit a PennDOT Driver License Center to be re-credentialed and issued a REAL ID by **December 1, 2017**. The vast majority of the costs to fully implement REAL ID in Pennsylvania are associated with the re-credentialing of over 9 million Commonwealth citizens over approximately

a 9-year period, which means millions of additional face-to-face visits each year at PennDOT Driver License Centers. This undertaking will require additional PennDOT facilities and staff.

Based on our analysis of the REAL ID regulations, at this time we estimate that start-up costs to fully implement REAL ID in Pennsylvania would be between \$120 and \$140 million. Average yearly on-going costs for re-credentialing are estimated to be between \$40 and \$50 million. Further, we estimate that the cost of a driver's license could increase between \$13 and \$38, in addition to the current \$26 fee, depending on how quickly we decide to recover implementation costs.

To the degree possible, our estimates include all known costs. However, we still await answers from U.S. DHS about specific requirements regarding facility security as well as the visual security features that will need to be placed on a REAL ID driver's license/identification card to designate it as a REAL ID. Through contact with U.S. DHS, PennDOT has been able to obtain some clarification as to the requirements of REAL ID set forth in the regulations. However, with these unknowns remaining, costs estimates to

fully implement REAL ID are preliminary and are subject to further confirmation.

In regard to funding, currently REAL ID funds are very limited.

Pennsylvania applied for grant funding to U.S. DHS for the development of REAL ID-specified electronic verification systems. This past Friday, U.S. DHS awarded the Commonwealth approximately \$2 million in grant funding. Pennsylvania was one of 48 U.S. states or territories granted close to \$80 million in federal funds for enhancing driver's licenses and photo identification cards. However, the monies available through the grant do not begin to cover the full funding necessary for the development of these systems. While Pennsylvania has received this grant money, let me assure you that our participation in any grant opportunity does not commit the Commonwealth to participate in REAL ID.

With this background in mind, I'd like to take a minute to discuss what PennDOT does today when issuing a driver's license and/or a photo ID card.

Obtaining a driver's license and/or photo ID card is an individual's choice; however, driver's licenses and photo ID cards have become the most

recognized proofs of identity over the years. Therefore, regardless of whether Pennsylvania decides to implement REAL ID, PennDOT is and will remain committed to enhancing the security of our products, processes, systems and facilities and maintaining the privacy of customer data.

PennDOT continually strives to strengthen the driver's license/photo ID card issuance process and utilizes technology to reduce the opportunity for license fraud and identity theft. In fact, since 2001 many enhancements to the driver's license and photo ID card issuance process have been made to reduce the risk for identity theft and license fraud, including the use of biometric technology, which further aids PennDOT in validating an individual's identity. Again, these changes were put in place long before the REAL ID final regulations were issued and were not in response to core provisions of REAL ID.

Fundamental to issuing driver's licenses and photo ID cards, Pennsylvania law requires that individuals must meet certain identity and residency requirements in order to obtain a Pennsylvania driver's license and/or photo ID card.

A U.S. citizen applying for a driver's license or photo ID card must present PennDOT with one form of identification such as a birth certificate with a raised seal or a U.S. Passport. In addition, the individual must provide two proofs of residency and his or her Social Security card. PennDOT performs three main electronic verifications including verifying the individual's Social Security number with the Social Security Administration; verifying that the individual's driving privilege is not suspended in another state; and, if the individual is moving from another state, verifying the validity of the out-of-state driver's license with the issuing state. In addition to these checks, PennDOT is currently participating in a digital image sharing program with 10 other states. This check is another anti-fraud measure to ensure individuals standing in front of us are who they say they are.

A non-U.S. citizen applying for a driver's license or photo ID card must present PennDOT with valid immigration documents based on his/her immigration status, a Social Security card and two proofs of residency. PennDOT performs, when applicable, the same electronic verifications as mentioned previously. In addition, PennDOT completes an electronic verification of the INS credentials of those individuals who are not eligible for a Social Security card.

All electronic verifications must be satisfactorily completed prior to the issuance of any product.

As evidence of PennDOT's continued commitment to upholding the integrity and enhancing the security of the driver's license/identification card issuance process, PennDOT recently completed an upgrade of its photo technology and equipment at its Photo License Centers across the Commonwealth. With this upgrade, all driver's license products, including photo ID cards, are now outfitted with a new overlay and additional security features. The new overlay and security features help to mitigate the risk for fraud.

PennDOT, also as part of this upgrade, is issuing temporary driver's licenses and photo ID cards to individuals who have never held a Pennsylvania driver's license or photo ID, such as new drivers and new residents. The temporary product is valid for 15 days. During that 15-day period, PennDOT uses state-of-the-art facial recognition technology, FaceEXPLORER, to validate the applicant does not have more than one driver's license or photo ID card already issued under a different identity. PennDOT is also using this biometric technology to conduct facial

recognition checks of all images we have stored in our database to determine if multiple records exist for one individual. After a comprehensive review has been completed and if it is determined that the individual has more than one record, those driving records are cancelled.

Using reasonable means of detecting license fraud/identity theft is an essential function of PennDOT. Nothing could be more basic to this charge than having the ability to compare the photo on one driver's license or photo ID card to the photos on other driver's licenses and photo ID cards. If Senate Bill 1220 is enacted, PennDOT could no longer utilize FaceEXPLORER, which is a valuable anti-fraud tool.

In addition to these requirements, PennDOT, per Section 1610 of the Vehicle Code, must comply with the U.S. Patriot Act, which requires individuals applying for hazardous materials endorsement on a commercial driver's license to be fingerprinted as part of a FBI background check. If Senate Bill 1220 is enacted, PennDOT would no longer be able to license Pennsylvania commercial drivers to transport hazardous materials. This would have a significant economic impact to many Pennsylvania businesses and citizens as well as potentially reduce federal funding to the

Commonwealth. It would also jeopardize the safety and security of our roadways.

In addition, this legislation would also affect other Commonwealth agencies, particularly law enforcement, who utilize the basic fingerprint biometric to identify criminals.

Finally, while PennDOT acknowledges the concept and principles of the Real ID Act of 2005 and recognizes the fundamental importance of establishing the proper identity when issuing a driver's license or photo identification card, we realize there are several issues with REAL ID that need to be addressed, including unanswered questions regarding REAL ID requirements and how it will be funded.

The Administration continues to study this issue to develop recommendations that balance four critical factors: security of our citizens and our country; privacy of our citizens; convenience to our citizens; and costs to implement and maintain the REAL ID program.

However, Senate Bill 1220 is unnecessary for the opposition of the REAL ID Act. The legislation is too restrictive as it would not only prohibit law enforcement from participating in federal programs to identify criminals but it would eliminate some of the valuable tools necessary for PennDOT to combat license fraud/identity theft.

In conclusion, let me again assure you that regardless of whether Pennsylvania implements the REAL ID Act, PennDOT is and will remain committed to enhancing the security of our products, processes, systems and facilities and maintaining the privacy of customer data.

At this time, I am available to take any questions you may have. Thank you.



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REGARDING

REAL ID

BEFORE THE

Communications & Technology Committee
Pennsylvania Senate

JUNE 25, 2008

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Chairman Wonderling, Minority Chair Williams and honorable members of the Pennsylvania Senate Communications and Technology Committee, thank you for the invitation to speak with you today about the REAL ID. I am Jeremy Meadows from the National Conference of State Legislatures (NCSL), the bipartisan organization that serves the legislators and staff of our nation's 50 states, its commonwealths and territories. NCSL provides research, technical assistance and opportunities for policymakers to exchange ideas on pressing issues, such as the REAL ID. NCSL is also an effective and respected advocate for the interests of state governments before Congress and federal agencies.

For NCSL to lobby an issue, state legislators from three-quarters of the states must agree on a position. You and your elected colleagues determine not just what NCSL's lobbying priorities should be, but what message you want us to deliver to Congress and the federal administration on your behalf. Since 2006, you have debated and set NCSL's policy on the REAL ID, and even the U.S. Department of Homeland Security (DHS) credits your engagement for dramatically altering the REAL ID final regulations.

In my testimony today, I would like to provide you with:

1. a brief history of the REAL ID Act;
2. a review of the REAL ID final regulations;
3. a summary of the REAL ID grant allocations;
4. a summary of state legislative activity on the REAL ID;
5. a snapshot of NCSL's work on REAL ID; and
6. a congressional update.



History of the REAL ID

When the 9/11 Commission issued its final report, it suggested that:

“Secure identification should begin in the United States. The federal government should set standards for the issuance of birth certificates and sources of identification, such as driver’s licenses. 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” (73 FR 5273).

Congress acted to realize the Commission’s recommendation and in December 2004, President George W. Bush signed into law the National Intelligence Reform Act of 2004 (*P.L. 108-458*). The law, among other things, required the U.S. Secretary of Transportation to establish a negotiated rulemaking process—to include state officials, privacy advocates, information technology experts, federal transportation and homeland security officials, and others—to devise minimum standards for state-issued driver’s licenses (DL) and identification cards (ID). While the first meeting of the group had taken place, the collaborative process came to a screeching halt on May 11, 2005, when, without a hearing in either chamber, the REAL ID Act was enacted as part of a supplemental spending bill for tsunami relief and the war on terrorism.

In general, the act mandates states to issue REAL ID-compliant driver’s licenses and identification cards only to individuals lawfully present in the United States pursuant to federal standards, which were to be further defined by DHS. If states do not comply, the federal government will not accept their IDs for “official purposes.” “Official purpose” is defined under the act to include accessing federal facilities, boarding federally regulated commercial aircraft, and entering nuclear power plants, and any other purposes that the Secretary of Homeland Security determines.



On January 11, 2008, nearly three years after the enactment of the REAL ID and just 120 days before the statutory implementation date, DHS issued the final regulations to guide states' implementation of the act.

The Final Regulations

The good news is that the final regulations seem to offer much more flexibility for states than was originally proposed in the draft regulations. In particular, the final regulations:

- provide states additional time to reenroll existing driver's license and identification card holders;
- allow for an age-based progressive reenrollment process (a state-issued driver's license or identification card must meet the requirements of the REAL ID by December 1, 2014 for individuals born after December 1, 1964 and by December 1, 2017 for individuals born before December 1, 1964);
- provide flexibility on security features of driver's licenses and identification cards;
- allow states to determine which employees will be subject to background checks; and
- establish a flexible waiver and exceptions process.

The final regulations also limit the "official purpose" to those listed in the act.

Based on this added flexibility, DHS has re-estimated the 10-year costs to states at just under \$4 billion, down \$10 billion from the original \$14 billion estimate.

The bad news is that a number of issues remain unresolved including:

- the connectivity to and governance (including privacy protections) of the databases that states will need to access in order to electronically verify the validity of identity documents;
- the true cost of the REAL ID, including the user fees states will have to pay when accessing these databases; and
- the federal government's commitment to fund the REAL ID.

The Connectivity to and Governance of Electronic Databases

The REAL ID requires states to electronically verify the validity of identification documents presented by every individual applying for a REAL ID-compliant credential. This process will require states to have access to at least five national databases. However, not all of these databases exist and their availability and reliability on a national level have yet to be tested. In addition, for several of these systems, the method by which states will connect to these systems and the governance structure for information sharing has yet to be resolved, causing much consternation.

In order to effectively implement the REAL ID, these systems need to be made available and tested, not yesterday, not last week, but last year. However, in order to do that a governance structure, to which all 56 U.S. licensing jurisdictions can agree, has to be established. The lack of a governance structure makes it difficult for legislators, like yourselves, to respond to questions you receive from your constituents such as: Who will have access to my information? How will it be protected? Is this a national database?



The True Cost of the REAL ID

As mentioned earlier, DHS estimated in the final regulations that it will cost states \$3.9 billion to implement the REAL ID; however, NCSL fears those costs could be higher. The \$3.9 billion estimate assumes that only 75 percent of individuals currently holding a driver's license or identification card will apply for a REAL ID, excluding the majority of individuals with a U.S. Passport and those who do not fly commercially. For Passport holders to have this option, their state of residence must operate a two-tiered system, offering both a REAL ID-compliant and a non-compliant card. Does the \$3.9 billion figure take into account the cost states face if they choose to operate a two-tiered system? Further, does the \$3.9 billion number take into account the fees states may face in order to access the electronic databases to verify applicant information or the FBI databases required for employee background checks? This concern with the fees will become an even bigger issue in October of this year when the transaction fee on one of the existing systems—the Systematic Alien Verification Entitlement (SAVE) system—will increase from \$.05 to \$.50 for an initial query. Because of all of these unknown costs, it is difficult for states to project the true fiscal impact of implementing the REAL ID.

The Federal Government's Commitment to Fund the REAL ID

Whether the cost is \$3.9 billion or something higher the fact still remains, this is effectively an unfunded mandate. Congress has appropriated only \$90 million for state implementation of the REAL ID and the president's FY 2009 budget proposal zeroes out the grant program created by Congress in FY 2008. In its place, the president's budget proposes to create a new \$110 million National Security and Terrorism Prevention Grant program, of which implementation of the REAL ID is one of the eligible expenses. In addition, states have been authorized to use State



Homeland Security Grant Program (SHSGP) funds for REAL ID implementation, but this money is largely already spoken for by other homeland security priorities.

Grant Awards for Implementation of the Real ID

How is the \$90 million being spent?

- \$7 million was awarded to Kentucky for two pilot programs;
- \$2.5 million was used by DHS for grant management;
- \$400,000 was rescinded and paid to the U.S. Treasury; and
- \$79,875,000 million will be distributed to the states through a competitive grant program.

On Friday, June 20, 2008, DHS announced the outcome of the competitive grant program and the state allocations of the \$79.9 million. All 48 U.S. licensing jurisdictions that submitted grant applications received some level of funding based on the number of driver's licenses and identification cards they issue and the "overall effectiveness of proposals based on the criteria identified in the REAL ID Demonstration Grant Program Application Kit," according to DHS. While I have attached a copy of the allocations at the end of my testimony, awards range from a low of \$300,000 to American Samoa, Guam, Puerto Rico, the U.S. Virgin Island and South Dakota to a high of \$17.5 million to Missouri. Note that \$17 million of Missouri's award is for the development of the verification hub. Pennsylvania's award is in the amount of \$2,042,800.

According to DHS officials on a conference call last week, a state does not have to commit to implementing the Real ID in order to accept the award as long as the funds are spent on activities consistent with implementing the 18 benchmarks. Many



of the state officials on that call stated a need for that assurance to be put in writing and/or in the grant contracts.

State Activity

Since REAL ID's enactment, legislators in 48 states and the District of Columbia have proposed over 200 pieces of legislation related to REAL ID and, of those, at least 42 states have considered legislation that either asserted the state's opposition to REAL ID or urged Congress to amend or repeal the Act.

As of June 19, 2008, anti-REAL ID measures had passed in twenty-three states. Nine of those states— Alaska, Arizona, Idaho, Maine, Montana, New Hampshire, Oklahoma, South Carolina and Washington— passed bills that forbid state agencies from complying with REAL ID. Legislators in several states are currently considering similar proposals.

Not all responses to the REAL ID Act have been negative. Since 2005, legislators in 19 states have proposed measures that would bring their states closer to compliance with REAL ID. Lawmakers in at least five states— Indiana, Michigan, Nevada, Ohio and Wisconsin— have passed REAL ID compliance related laws.

Although the May 11, 2008 statutory deadline has passed and a number of state legislatures are still debating whether to implement the REAL ID, the final regulations provided states the opportunity to request an extension to December 31, 2009. All 56 U.S. licensing jurisdictions have received an extension.

What happens next? The final regulations include a list of 18 interim benchmarks that a state must meet in order to be considered “materially compliant.” If a state has



met these 18 benchmarks by December 31, 2009 and still needs additional time in order to come into full compliance with the REAL ID, the state can request a second extension until May 11, 2011.

While DHS originally indicated that requesting the first of the two possible deadline extensions would not commit states to implementing REAL ID, several articles published around the country in early March quoted DHS spokespeople as saying that states' requests for extensions are "good faith" indications of a state's intent to comply.

NCSL Policy and Congressional Activity

Given the amount of state legislative activity, it should not come as a surprise that the REAL ID has been the issue of many hours of discussion and debate at NCSL meetings over the past several years, which has resulted in the following policy position:

NCSL calls on Congress to repeal the REAL ID Act and reinstitute the negotiated rulemaking process created under the Intelligence Reform and Terrorism Prevention Act [IRTPA] of 2004 (P.L. 108-458) and fully fund the requirements of the final rule promulgated under the negotiated rulemaking process.

Given NCSL's current position, a letter was sent in April in support of S. 717— the *Identification Security Enhancement Act of 2007*— which repeals the REAL ID and reinstates the negotiated rulemaking process that preceded it. This legislation was first introduced at the end of the 109th Congress by United States Senators Akaka (Hawaii) and Sununu (New Hampshire). When the 110th Congress dawned in 2007, Senators Akaka and Sununu were joined by Senators Leahy (Vermont) and Tester



(Montana) to reintroduce their 'repeal and replace' legislation; Senators Alexander (Tennessee), Baucus (Montana), Kerry (Massachusetts), and McCaskill (Missouri) have also joined as co-sponsors. In April, during NCSL's Spring Forum, NCSL and several Pennsylvania legislators met with staff to Senator Specter, the Ranking Member on the Senate Judiciary Committee, to which S. 717 has been referred, in order to encourage him to support and possibly co-sponsor the bill. Support from Pennsylvania's Senators would still be very helpful.

On the House side, Congressman Allen (Maine) has introduced similar legislation (H.R. 1117); that bill has 36 co-sponsors including Pennsylvania Representatives Christopher Carney and John Murtha.

In addition, NCSL had requested that the Administration and Congress provide at least \$1 billion in FY 2008 for state implementation. These efforts failed.

As for other REAL ID-related congressional activity, several measures have been introduced to suggest more stringent means for encouraging states to comply with the REAL ID. There have also been several legislative attempts to expand the use of REAL IDs—some bills have called for states to use REAL IDs for voter registration purposes and one immigration bill item linked REAL ID to employment eligibility.

At the end of April, Senator Akaka invited NCSL to testify before his Senate Homeland Security and Governmental Affairs Subcommittee. NCSL President, Representative Donna Stone from Delaware, represented NCSL at the April 29, 2008 hearing. This is only the second congressional hearing on the REAL ID. The first was held in March 2007 in the same subcommittee.



Finally, both the House and Senate Appropriations Committees have included \$50 million for state REAL ID costs in their respective FY 2009 Homeland Security spending bills, effectively continuing the FY2008 grant program that the President's budget zeroed out. Action on appropriations bills in either House is still pending and rumors of continuing resolutions abound.

NCSL's policy process will continue to determine NCSL's posture on REAL ID, and I encourage you to be involved in that process so that Pennsylvania's interests are factored into the debate. NCSL's Transportation Committee, which has jurisdiction for REAL ID policy, will next meet at NCSL's Legislative Summit this July in New Orleans. NCSL will continue to monitor state activity on the REAL ID as well as developments on Capitol Hill or within DHS, and we look forward to remaining a resource to you as you consider Pennsylvania's best course of action. To access NCSL's policy positions, summary briefs, links to the referenced congressional legislation, as well as much more information on REAL ID, visit:

www.ncsl.org/realid.

Thank you again for the opportunity to appear before you today, and I look forward to your questions.

Contains excerpts from the Testimony of Representative Donna Stone, Delaware General Assembly on Behalf of the National Conference of State Legislatures, Regarding the Impact of Implementation: A Review of the Real Act and the Western Hemisphere Travel Initiative, Before the Subcommittee on the Oversight of Government Management, the Federal Workforce and the District of Columbia, Committee on Homeland Security and Governmental Affairs, United States Senate, April 29, 2008.



NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

April 4, 2008

The Honorable Daniel K. Akaka
United States Senate
141 Hart Senate Office Building
Washington, D.C. 20510

The Honorable John E. Sununu
United States Senate
111 Russell Senate Office Building
Washington, D.C. 20510

Donna D. Stone
*State Representative
Delaware
President, NCSL*

Sharon A. Crouch Steidel
*Director, Information Systems
Virginia House of Delegates
Staff Chair, NCSL*

William T. Pound
Executive Director

Dear Senators Akaka and Sununu:

The National Conference of State Legislatures (NCSL) expresses its support for your legislation – S. 717, the Identification Security Enhancement Act of 2007 – that would repeal the REAL ID Act and reinstitute the negotiated rulemaking process that preceded it.

State legislators are extremely concerned about homeland security and place security and emergency preparedness as a very high policy and budgetary priority. State legislators share the goals of REAL ID and are committed to making sure that state-issued identity credentials are tamper-resistant, free from fraud and abuse, and reliable documents. Many state legislatures initiated efforts to improve state-issued driver's licenses even before the tragedy of September 11, 2001.

However, lacking the full policy and financial commitment of the federal government to ensure the success of the state-federal partnership needed to make REAL ID possible, NCSL now calls upon Congress to repeal REAL ID and reinstate the negotiated rule-making process. This approach will achieve our shared goals for security in a manner that respects states' rights, privacy protections, and fiscal responsibility.

Please have your staff contact Jeremy Meadows (202-624-8664; jeremy.meadows@ncsl.org) or Molly Ramsdell (202-624-3584; molly.ramsdell@ncsl.org) in NCSL's Washington office with any questions or concerns. Thank you for your courage to seek this reasoned approach to security measures. We look forward to working with you.

Sincerely,

Representative Donna D. Stone
Delaware House of Representatives
President

Speaker Joe Hackney
North Carolina House of Representatives
President-Elect

CC: Members, U.S. Senate Committee on the Judiciary
Members, U.S. Senate Committee on Homeland Security & Governmental Affairs

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Summary

The REAL ID Act of 2005 mandates that states meet specific standards and requirements when issuing drivers' licenses and identification (ID) cards to be used for federal purposes, such as entering federal buildings or boarding airplanes. It was enacted in May 2005, as part of the fiscal year (FY) 2006 emergency supplemental appropriation (P.L. 109-13).

On June 20, 2008, the Department of Homeland Security (DHS) announced the award of \$79.785 million in competitive grants as part of the FY 2008 REAL ID Demonstration Grant Program. Since the law's enactment, DHS has identified a maximum of \$361.375 million that could be used to implement REAL ID, including:

- The \$79.875 million just awarded
- Two pilot projects that provided \$3 million to Kentucky in FY 2006 and an additional \$4 million subsequently
- \$274.5 million through a provision in the State Homeland Security Grant Program (SHSGP) appropriations for FY 2007 and FY 2008 that allows up to 20% of those funds to be used for REAL ID.

DHS estimates that implementing the regulation will cost states about \$3.9 billion over 10 years. (See *Issue Brief 07-17* and *Issue Brief 08-06* for more background on cost issues.)

Background

The REAL ID Act prescribes standards for state-issued drivers' licenses and ID cards, including a variety of specific information and features, such as full legal name; date of birth; gender; driver's license or ID card number; a photograph; address; signature; physical security features designed to prevent tampering, counterfeiting or duplication of the document; and a common machine-readable technology, such as a magnetic strip, with defined minimum data elements.

While the law originally had a compliance deadline of May 11, 2008, the final regulations, released in January 2008, provided an extension. By request, DHS granted extensions for compliance to December 31, 2009. By that date, states must upgrade the security of their license systems to include a check for the lawful status of all applicants, to ensure that illegal aliens cannot obtain REAL ID licenses. If states demonstrate that they have achieved certain milestones towards compliance (18 milestones are identified in the rule), but have not reached full compliance by December 31, 2009, DHS will grant a second extension upon request to May 11, 2011.

States with extensions have until December 1, 2014, to comply with REAL ID requirements for driver's license and ID cards for individuals born after December 1, 1964; they have until December 1, 2017, to comply with REAL ID requirements for those born on or before December 1, 1964.

Federal Funding

The just-announced awards combine two funding flows. Guidance for a \$31.3 million REAL ID Demonstration Grant Program was issued in December 2007, with an application deadline of January 28, 2008. Subsequently, another \$50 million that was provided as part of FY 2008 omnibus appropriations was combined with the original amount and the application deadline was extended. These awards are from that combined pot of money.

Funds can be used for checking motor vehicle records in other states to ensure that drivers do not hold multiple licenses and for verification against federal records like immigration status. The grants are intended to help standardize methods by which states verify an applicant's information with other states and identify capabilities that can be used by all states, while protecting personal identification information.

States with legislation that prevents them from implementing REAL ID are eligible for the grants, as long as the funding is used in a compliant fashion.

Two other grants have been awarded. The REAL ID Vital Events Verification State Project Grant provided \$4 million to Kentucky to help verify birth certificates and other vital records. This funding complements a \$3 million grant for a REAL ID Pilot Project awarded to Kentucky in FY 2006 that tested software to improve identity verification capabilities.

States are permitted to use up to 20% of their FY 2007 and FY 2008 SHSGP funding to help implement REAL ID. However, states are required to pass through 80% of SHSGP funds to local governments, meaning that a decision to use 20% of such funds for REAL ID would eliminate any other state use of the funds. SHSGP was funded at \$525 million in FY 2007 and \$890 million in FY 2008.

Table 1 lists the new grants, which were awarded by a peer review panel. Missouri received the largest allocation because it will lead the effort to develop a verification hub to link a state's department of motor vehicles with relevant federal and state databases. States partnering with Missouri to develop the hub received an additional \$1.2 million each for that purpose, as reflected in the amounts listed on Table 1: Florida, Indiana, Nevada and Wisconsin.

Alaska, Idaho, Louisiana, Montana, New Hampshire, Northern Mariana Islands, Oklahoma and Washington did not submit grant applications.

Next Steps

For FY 2009, the president has proposed competitive National Security and Terrorism Prevention Grants (\$110 million), with REAL ID among the permissible uses. Also, \$50 million was requested for completion of the verification hub. At the committee level, the Senate has rejected the president's proposal in favor of current programs funded at current levels, and the House has yet to act.

*For additional information,
contact:*

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Table 1**FY 2008 REAL ID Demonstration Grant Awards**

(dollars in thousands)

State	Amount
Alabama	\$500
Alaska	NA
Arizona	2,721
Arkansas	892
California	3,200
Colorado	1,170
Connecticut	1,902
Delaware	500
District of Columbia	500
Florida	3,751
Georgia	2,478
Hawaii	470
Idaho	NA
Illinois	2,308
Indiana	3,150
Iowa	1,211
Kansas	925
Kentucky	1,003
Louisiana	NA
Maine	1,024
Maryland	1,138
Massachusetts	1,610
Michigan	2,495
Minnesota	694
Mississippi	718
Missouri	17,548
Montana	NA
Nebraska	687
Nevada	2,894
New Hampshire	NA
New Jersey	1,287
New Mexico	500
New York	2,256
North Carolina	1,799
North Dakota	500
Ohio	1,200
Oklahoma	NA
Oregon	1,170
Pennsylvania	2,043
Puerto Rico	300
Rhode Island	500
South Carolina	500
South Dakota	300
Tennessee	694
Texas	3,200
Utah	1,006
Vermont	500
Virginia	2,660
Washington	NA
West Virginia	500
Wisconsin	2,071
Wyoming	500
Territories	600
Virgin Islands	300
TOTAL	\$79,875



Betty L. Serian is principal and CEO of Betty Serian and Associates; a consulting practice specializing in driver licensing and vehicle registration, transportation and management. Serian's consulting business is based on her more than 26 years in the transportation business where she most recently served as Deputy Secretary for Safety Administration for the Pennsylvania Department of Transportation (PennDOT) for 12 years. As one of the longest tenured motor vehicle administrators in the USA and Canada (appointed by former Governor Tom Ridge and reappointed by Governor Edward G. Rendell), Serian oversaw nearly 1200 driver and vehicle service employees and was responsible for all safety, service and security operations at PennDOT's motor vehicle administration, including the issuance of identification credentials and driver licenses for more than 8.5 million drivers. She was also responsible for the issuance of credentials and the management of the vehicle-side of the business for the Commonwealth's 11.1 million vehicle owners. Her responsibilities included extensive regulatory oversight of agents and the development of and implementation of multi-million dollar contracts in the driver, vehicle, systems and services areas.

During her tenure as Deputy Secretary, **Ms. Serian directed major change at PennDOT's driver and vehicle services**, making it more customer-driven and user-friendly. She expanded customer access, enhanced the quality of products and services, reduced costs and increased customer convenience through more efficient operations. As Deputy Secretary for Safety Administration, Ms. Serian also oversaw key highway safety improvements relating to driver behavior and specific driver improvement programs. She was responsible for developing and delivering a customer-conscious business approach, implementing state and federal legislation, integrating new initiatives to improve customer services, streamline processes and upgrade product quality. She also has extensive experience in large scale system projects, the use of new technologies, customer satisfaction, change management and organizational transformation.

In her 26-year transportation career, she held a variety of leadership positions including Director of Customer Relations for PennDOT.

Ms. Serian was actively involved with **the American Association of Motor Vehicle Administrators (AAMVA)**, an international association that represents state and provincial officials in the United States and Canada who administer and enforce motor vehicle laws. She served in many different leadership capacities in the Association and concentrated on advancing initiatives to secure identification credentials through uniform identification standards, enhanced document security, and better use of technology. In response to terrorist attacks on Sept. 11, 2001, Ms. Serian was appointed chair of AAMVA's Special Task Force on Identification Security; an effort to improve uniformity, verification and authentication of driver licensing and ID credentials. In 2002-2003, she served as Chair of the Board for AAMVA. Prior to her retirement from PennDOT in January 2007, Ms. Serian served as Vice Chair of AAMVA's REAL ID Task Force. Because of her expertise in the issuance of secure identification credentials, Ms. Serian was retained by the Department of Homeland Security to assist in development of the final Real ID regulations.

**Coalition for a Secure Driver's License
Testimony of Neil Berro, Director of Community Relations and Spokesman
Before the Committee on Communications and Technology of the Senate of the
Commonwealth of Pennsylvania, 9:00 AM, June 25, 2008, Harrisburg,
Pennsylvania**

Hello. My name is Neil Berro and I am the Spokesman for the Coalition for a Secure Driver's License, also known as CSDL.

We are a non partisan educational public charity with offices in New York City and Washington, DC. Our central objective is to provide educational materials, about the public safety benefits of establishing and maintaining strong security for drivers' licenses and other identity documents.

On May 22nd, 2008, the REAL ID Act became effective as Public Law 109-13. It is, in fact, Federal Law. The federal regulations that apply the law strengthen the state system of drivers' licenses. Once REAL ID is fully implemented, federal inspectors and law enforcement officers will be better able to identify people who may pose a risk to the rest of us.

In 2005, when this bill passed, the 9/11 Commission and the Congress were concerned about the inability of the United States to tell with any accuracy whether an individual possessing a driver's license was the same person identified on that license. This risk to public safety continues because the REAL ID Act is a very long way from being implemented or enforced. There remains a substantial risk from foreign terrorists, according to the most recent report of the Director of National Intelligence.

Last week the Department of Homeland Security announced awards of grants to assist states to reach material compliance with 18 REAL ID requirements. Pennsylvania will receive slightly more than \$2 million which represents a down payment on future federal grant funding.

The 9/11 Commission recommended that the U.S. improve its system for issuing identification documents. In the Commission's words, "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.” The Commission specifically urged the federal government to “set standards for the issuance of sources of identification, such as driver’s licenses.” Congress responded to this key recommendation by passing the REAL ID Act of 2005.

REAL ID requires states to verify a driver’s license applicant’s source identity documents, such as a birth certificate, along with the applicant’s date of birth, Social Security Number, residence and lawful status. An electronic verification hub operated by a coalition of states and the American Association of Motor Vehicle Administrators will facilitate the state-to-state exchange of information. This will allow state DMVs to check for duplicate registrations in multiple states, therefore limiting the ability for persons to obtain multiple licenses for fraudulent purposes, or for terrorism. The 9/11 terrorists had duplicate licenses from Florida, Virginia, and Maryland, and that vulnerability will remain until the REAL ID hub is in place.

While DHS has pledged to fund the development and deployment of the hub, states will continue to manage and operate their own state record systems for driver’s license and ID card issuance.

Once the federal infrastructure has been completed, PennDOT can confirm that the driver’s license issued in another state is being presented by an applicant for a Pennsylvania license was validly issued to that same person. In other words, a clerk at the Pennsylvania DMV can quickly validate that the person standing in front of the counter is the same person to which the New York license was issued. In the worst cases, the clerk can determine that the person standing at the counter is an identity thief. The clerk can take steps to insure that the identity thief does not perpetrate fraud on Penn DOT.

It doesn’t matter whether the fraud is undertaken by terrorists, by identity thieves or by illegal aliens. The threat and risk to the safety of Americans posed by the current fragmented situation needs to be corrected. REAL ID compliant drivers’ licenses are a key public safety component for airport inspections. The infrastructure and data protection criteria of the federal driver’s license regulations will require the states to close security loopholes that today facilitate criminals and illegal immigrants.

Why should Pennsylvania comply with REAL ID regulations?

Pennsylvania needs to strengthen its controls so that a validly issued license provides reasonable certainty that it carries the actual identity of the person carrying it. While Penn DOT has been a leader in many security features, the major weaknesses today include:

- 1) Insufficient training for processing clerks regarding counterfeit and fraudulent documents combined with an absence of third party validation of documents. Research data shows that fraudulent drivers' licenses are a factor in more than one in three federal investigations of identity theft and fraud. This vulnerability is the means by which the cocaine distribution gang members indicted by Pennsylvania's Attorney General were able to obtain valid drivers' licenses through the use of stolen identities.
- 2) Undue reliance on source identity documents such as birth certificates and utility bills that can be easily forged or counterfeited, combined with an unwillingness or inability of most states to stop issuing licenses to people with duplicate Social Security Numbers. In a recent internal review by an office of the federal Department of Transportation, only Ohio and Hawaii driver's license records were found to be free of duplicate SSNs. That means that in nearly all states driver's licenses have been issued – and those licenses remain effective – to identity thieves.
- 3) Insufficient physical security features embedded in the card to prevent counterfeiting. This vulnerability makes it difficult for law enforcement to visually differentiate between real and fake drivers' licenses, and a consequent high level of safety risk for the police, as well as the public. Likewise, only a handful of states have purchased card authentication machines which can quickly spot fake or altered identity documents, and Penn DOT is not among them.
- 4) Almost no background investigations of DMV employees. Failing to check out key employees creates an environment where there is no barrier to collusion between criminals and state employees. While most DMV employees are honest, there are always a few bad apples, and crooks looking for inside contacts to facilitate fraud will find those dishonest DMV employees.

Cooperation between the states and the federal government regarding driver's licenses is not new. For many years, the states have worked together to police commercial drivers' licenses to prevent bad drivers and criminals from exploiting interstate opportunities through the Commercial Driver's License Information System, known by its acronym CDLIS. Operating for nearly 20 years, CDLIS has never once experienced a data loss or had its security compromised. A large part of that security success lies in the design of CDLIS, which is a pointer system that substantially confirms data, and severely limits query capability.

CDLIS is an excellent example of how all the states can work together to protect the public safety. Law enforcement officers have a high degree of certainty that when a person presents a commercial driver's license as proof of identity, that person is exactly who he or she claims to be.

Most of us are familiar with the Flight 93 National Memorial in Stonycreek Township, Somerset County, Pennsylvania. We should not forget the example set by the heroes of Flight 93. Foreign terrorists will strike again if we do not maintain our vigilance and forcefully oppose them. In the case of the 9/11 terrorists, several had overstayed their visa terms, but were still able to obtain drivers' licenses. Because of this current loophole exploited by the 9/11 terrorists that the REAL ID act regulations stipulate that states must require proof of lawful presence.

The United States is a signatory to the 1949 Geneva Convention on Road Traffic, under which the citizens of more than a hundred countries can drive in the United States for a year using the driver's license of their native country. The United States is also a signatory to the Inter-American Convention on the Regulation of Inter-American Automotive Traffic, which allows driver's license holders from Mexico and 8 other Latin American countries to freely drive about the United States without obtaining a license from one of our own states for up to a year. Together, these agreements eliminate the need for a state to issue a driver's license to a short term foreign visitor. We at CSDL urge states to restrict driver's license terms to the term on the visa, and to refuse driver's license applicants who are foreign visitors without valid visas.

Weak driver's license procedures were a contributing factor to the terrorist attacks of September 11th, 2001.

Weak procedures for document verification and indifference to requiring proof of lawful presence encourage illegal visa overstay and facilitate employer violation of the labor laws that protect American workers.

Criminals will continue to attack any vulnerability in state identity document processes, and existing loose practices contribute to identity theft and multiple forms of fraud.

Pennsylvania needs to maintain a disciplined approach, working with federal government to provide reliable identity documents to our lawful citizens and legal immigrants.

Until REAL ID is fully implemented in all states and jurisdictions, the United States will remain at substantial risk from foreign and domestic terrorists, from unfriendly foreign governments, and from both organized crime and the identity thief next door. Pennsylvania should continue to be a leader in Homeland Security, and encourage those states with weaker driver's license regimes to fully comply with PL109-13.

Thank you, Chairman Wonderling, for this opportunity to testify.



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TESTIMONY SUBMITTED BY
ANDY HOOVER, LEGISLATIVE ASSISTANT
AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA
TO
SENATE COMMUNICATIONS AND TECHNOLOGY COMMITTEE
JUNE 20, 2008
STATE CAPITOL, HARRISBURG

Good morning, Chairman Wonderling and members of the committee. My name is Andy Hoover. I am a Community Organizer and Legislative Assistant with the American Civil Liberties Union of Pennsylvania. Thank you for the opportunity to testify today about the federal Real ID Act. I am here today on behalf of the 19,000 members of the ACLU of Pennsylvania. Founded in 1920, the ACLU is one of America's oldest civil rights organizations. Today our nationwide membership is approximately half a million people. Our membership has doubled in Pennsylvania and around the country since 2001.

The Real ID Act is an unprecedented invasion of the privacy of all Americans and provides numerous constitutional entanglements. The ACLU vigorously opposed the legislation when it was proposed and continues to oppose it as the states decide whether or not to implement it. It is our position that the states should opt-out of participating in Real ID and that Congress should repeal it. Pennsylvania has the opportunity to opt-out of participation in the program by passing Senate Bill 1220. The ACLU of Pennsylvania supports this bill.

The Real ID Act essentially turns our state drivers' licenses into a national identification card. Our licenses will still have the seal and name of the Commonwealth of Pennsylvania, but Real ID's federal mandate disempowers the states from controlling their own departments of motor vehicles. By mandating the linking of the states' DMV databases to each other, Real ID creates a new nationwide database with an unprecedented quantity of information available in one place.

Proponents of Real ID claim that since the states will continue to maintain their own databases, that there will not be a single, interlinked database of driver information. But this reflects a misunderstanding of how databases work. A group of separate databases that are linked to one another by a query system *is exactly the same* as one giant database. Think of how Google works: Google queries multiple servers for bits of information and returns them to a central site. It does not maintain its own server with all the information available on the internet – it does not need to. The Real ID database would work the same way, allowing a DMV employee, federal official, or identity thief to pull up information on a Pennsylvania driver in Alabama, California or New York, even though that information is technically housed in Pennsylvania. 50 interlinked databases are functionally equivalent to one giant database.

The information that will be stored in this database also raises alarms about the invasion of privacy brought on by Real ID. The law requires verification of identification through numerous means, including a birth certificate, Social

Security card, a utility bill, and another form of photo identification. In addition, DMVs must store that information on site. This makes the entire nation's license holders vulnerable to identity theft.

Security experts do not believe that Real ID will make our licenses more secure and fraud less likely. Privacy Rights Clearinghouse, the nation's leading group on identity theft, said in a February 2007 statement ¹ that Real ID will not only make current methods of identity theft easier for criminals, but "will also create new opportunities for ID thieves to commit their crime." Renowned cryptographer and security expert Bruce Schneier has said "...There are security benefits in having a variety of different ID documents. A single national ID is an exceedingly valuable document, and accordingly there's greater incentive to forge it... when someone asks me to rate the security of a national ID card on a scale of one to 10, I can't give an answer. It doesn't even belong on a scale." The Department of Homeland Security's (DHS) own Data Privacy and Integrity Committee refused to endorse the Department's regulations for implementation on the Real ID Act.

The information contained on the license itself will also be vulnerable to attack. Under Real ID, our licenses will contain a machine readable zone. Despite input from many organizations, DHS did not require in its final regulations released earlier this year that the information on the machine readable zone be

¹ Givens, B. (2007) *Real ID Act will increase exposure to ID theft*. Retrieved May 19, 2008, from http://www.privacyrights.org/ar/real_id_act.htm.

encrypted. This means that the information on the license can be exploited for a variety of purposes, and there is legitimate concern that the private sector will create a parallel database for commercial use by accessing the data on Real ID-compliant licenses.

In fact, we know that private businesses like bars and clubs already capture customers' personal information from their licenses. Last year *The Patriot News* of Harrisburg published a cover story on this issue.² The article described how a company that owns 12 bars and clubs in the midstate accesses and exploits customer data. With the purchase of a simple scanner, the company obtains all the information currently on the licenses of its customers. In the article, the bar owner said, "For us, it is key. You capture names in a database for direct mailing... It's amazing, the amount of information. We can break it down a million different ways." One can only imagine how private businesses will further exploit the data available to them under Real ID. In a follow up editorial published on February 28, 2007, *The Patriot News* responded, "Permitting anyone outside the law enforcement system to collect and parse this data raises significant privacy concerns. Beyond its use strictly for identification purposes, the law should prohibit anyone from storing the information on the magnetic strip for any reason."³ Under Real ID, there is nothing to prevent this kind of exploitation.

² Courogen, C. (2007) What does your bar owner know about you? *The Patriot News*, February 24, 2007.

³ The Patriot News. (2007) Tavern patrons have a right to be told their personal data are being used for owner's profit. *The Patriot News*, February 28, 2007.

Real ID raises numerous constitutional concerns. For example, the photo requirement puts people of numerous faiths in an awkward position. People of the Amish faith who object to having their picture taken and Sikhs and Muslim women who wear head coverings will be forced to make the unenviable decision between upholding their religious tenets or obtaining a Real ID-compliant card in order to access federal buildings and participate in other federal business. At risk in this choice are basic rights to freedom of religious expression and the right to due process and equal protection. In its final regulations, DHS ignored this problem.

And for the privilege of having our privacy invaded and our constitutional rights violated by the federal government, Pennsylvanians will be forced to spend potentially hundreds of millions of dollars on this real nightmare of a program. At one point, DHS had estimated that Real ID would cost a total of \$23 billion. Upon the release of the final regulations in January, however, DHS claimed the program would cost \$9.9 billion, but this estimate is problematic. It assumes that 25 percent of eligible persons will opt not to get a license. In addition, the final price tag from DHS ignores additional costs such as the nationwide database, license renewals, and the document verification system required by Real ID. The DHS estimate also expects \$3.9 billion to be paid by the states and \$5.8 billion to come from "individuals." This means that taxpayers of Pennsylvania will get two bills for Real ID, one in the form of their state tax bill as the state budget pays for

additional costs and the other in the form of an increase in the cost of getting and renewing their driver's licenses.

Proponents of Real ID will claim the problems cited above are worth the benefits, particularly increased security. However, in DHS's current scheme, Real ID will not be fully implemented until 2017. Ironically, we could be well on our way toward a licensing system that balances both security and privacy were it not for the Real ID Act. The Intelligence Reform and Terrorism Prevention Act of 2004 created a negotiated rulemaking process on drivers' licenses. This process would have allowed the federal government, the states, and the public the opportunity to have greater input into creating a new standard for licensing – and was well on its way to accomplishing this important goal. Unfortunately, six months after its passage, this process was scrapped in favor of Real ID.

The states have rebelled against Real ID. On June 11, Arizona became the 10th state to choose not to participate in the implementation of this unfunded federal mandate, joining states as diverse as Maine, South Carolina, Montana, Georgia, Idaho, Washington, Oklahoma, Alaska, and New Hampshire. The Arizona law states, "This state shall not participate in the implementation of the Real ID act of 2005." It passed the Arizona House by a vote of 51-1 and the Senate by a vote of 21-7. Arizona's decision to opt-out of Real ID was truly a bipartisan effort. The state legislature is controlled by the Republicans, and the governor is a Democrat.

Governors from across the country have criticized Real ID vocally. Gov. Mark Sanford, Republican of South Carolina, sent a letter to his fellow governors and all members of Congress last month, calling Real ID “the worst piece of legislation I have seen during the 15 years I have been engaged in the political process,”⁴ and urging its repeal. When asked whether Montana would participate in Real ID, Governor Brian Schweitzer, Democrat of Montana, exclaimed “No. Nope. No Way. Hell No.”⁵

The ACLU believes that Senate Bill 1220 is the strongest of the bills that have been introduced in the General Assembly on this issue, and we commend Senator Folmer for his leadership. SB 1220 states, “Neither the Governor nor the Department of Transportation or any other Commonwealth agency shall participate in the compliance of any provision of the REAL ID Act of 2005.” This clause emphatically slams the door shut on Real ID.

Recent actions by DHS indicate that such a strong statement is necessary. Earlier this year, three opt-out states- South Carolina, Maine, and Montana- chose not to seek an extension of the deadline for complying with Real ID, which was originally scheduled for May. When these three states took no action, DHS granted them an extension, anyway. This clause in SB 1220 leaves the federal government with no wiggle room and no ability to back Pennsylvania into Real ID.

⁴ Gov. Mark Sanford to Members of Congress, April 3, 2008.

⁵ Associated Press, “Gov. signs law rejecting Real ID act,” *Billings Gazette*, April 17, 2007.

As you consider SB 1220, the federal government will probably threaten us by stating that if Pennsylvania chooses not to participate in Real ID, our residents will not be able to board airplanes, enter a federal building, or conduct other federal business without a passport. The federal buildings in Pennsylvania host a variety of government agencies, including the offices of our U.S. Senators, federal courtrooms, and the FBI. According to the Federal Aviation Administration, Philadelphia International Airport was the 10th busiest airport in the country in 2007. Pittsburgh International was the 40th busiest.⁶ The busiest airport is in Atlanta, Georgia, which is also an opt-out state. Phoenix International is the 8th busiest airport. Meanwhile, four of every five Americans do not have a passport.⁷ If Pennsylvania chooses not to participate in Real ID and the federal government follows through with its threat, it would cripple airport business in the Commonwealth and almost completely shut down federal business, along with the other opt-out states.

It is hard to imagine that the federal government would allow such a scenario to come to pass. The fact is that the federal government does not have the leverage. The states have the leverage. You have the power to tell the federal government no, nope, no way, hell no on Real ID.

⁶ FAA. (2007) Top 50 Busiest U.S. Airports for 2007- All Airports. Retrieved June 20, 2008, from http://www.faa.gov/news/updates/busiest_airports/.

⁷ Granitsas, A. (2005) Americans are Tuning Out the World. *Yale Global*, November 24, 2005. Retrieved June 20, 2008, from <http://yaleglobal.yale.edu/display.article?id=6553>.

Ten states have already rejected Real ID. Advocates from across the political spectrum and elected officials from both major parties oppose it. The fact is that Real ID is on its death bed. You have a chance to bury it. We hope you choose to support SB 1220.

Thank you, Chairman Wonderling, for the opportunity to testify this morning. I am willing to take questions at this time.