



**Statement of David Quam**

**Director, Federal Relations, National Governors Association**

**Before the**

**Committee on the Judiciary**

**Subcommittee on Crime, Terrorism and Homeland Security**

**U.S. House of Representatives**

**“Secure Identification: The REAL ID Act's Minimum Standards for  
Driver's Licenses and Identification Cards”**

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Chairman Sensenbrenner, Ranking Member Scott, distinguished members of the committee; my name is David Quam, Director of Federal Relations for the National Governors Association (NGA). I appreciate the opportunity to appear before you today to discuss the issues surrounding state implementation of REAL ID.

**OVERVIEW:**

Governors have always been committed to providing their citizens with drivers' licenses that are accurate and secure. In fact, during multiple discussions among governors regarding REAL ID, it was clear that all governors share common principles regarding licenses and state identification:

- Licenses and identification cards should accurately reflect the identity of their owner;
- The systems that produce the cards and the cards themselves must be secure;
- Information received about individuals should be protected to ensure their privacy; and
- Services and products must be provided in a cost-effective manner that maximizes value for taxpayers without diminishing the security or integrity of the license.

It is through this lens that governors have viewed federal efforts to regulate state licenses, such as REAL ID. While governors believe that the objectives of REAL ID are laudable, they have found that the law represents an unworkable and unfunded mandate that – without continued flexibility in its implementation – will fail to make us more secure.

**BACKGROUND:**

Congress passed the REAL ID Act (REAL ID) as part of the Emergency Supplemental Appropriations for Defense, the Global War on Terror and Tsunami Relief Act (P.L. 109-13). The law replaced section 7212 of the Intelligence Reform Act (P.L. 108-458), which established a negotiated rulemaking to determine national standards for state driver's licenses and identification cards (DL/IDs). NGA supported the compromise contained in section 7212 because it allowed stakeholders, including governors, to participate in the process of reforming what traditionally has been a state function.

Although the negotiated rulemaking was already underway, REAL ID repealed the provision and replaced it with statutory standards, procedures and requirements that must be met if state-issued licenses and identification cards are to be accepted as valid identification by the federal government. REAL ID's mandates require alteration of long-standing state laws, regulations and practices governing the qualifications for and the production and issuance of licenses in every state. Complying with REAL ID's standards will require significant investments by states and the federal government and will test the resolve of citizens directly affected by changes to state systems.

More importantly, all of this must be done quickly. The next milestone for states is January 15, 2013. As of that date, a state must be "materially compliant" with the act, or individuals can no longer use its licenses or identification cards to board commercial aircraft.

Given its impact on states and individuals, governors worked closely with other state groups, including the National Conference of State Legislatures and the American Association of Motor Vehicle Administrators, to recommend a regulatory framework that could bridge the gap between state laws and practices and the unrealistic requirements of REAL ID. NGA commends the Department of Homeland Security (DHS) for its continued efforts to develop a workable regulatory system to implement the law.

Unfortunately, even after the final rule was released, major issues remained including a lack of funding for state implementation; privacy concerns regarding the collection and use of individuals' information; and uncertainty regarding the availability, development and cost of electronic databases. These concerns ultimately helped propel 16 states to pass laws prohibiting compliance with REAL ID; laws that remain on the books today.

### **DEVELOPING A SOLUTION:**

Given states' ongoing concerns, and the looming deadline for material compliance, governors asked NGA to work with state experts to develop recommendations to improve REAL ID based on the following principles:

1. Fulfill the 9/11 Commission recommendation for the "federal government to set standards for sources of identification;"
2. Facilitate and encourage participation by all jurisdictions;
3. Enhance the security and integrity of all licenses and ID cards while retaining state flexibility to innovate; and
4. Address critical privacy concerns and reduce unnecessary costs.

NGA's work culminated in the following recommendations:

- **Provide funds necessary for states to comply with federal requirements.** The projected costs of complying with the act far outweigh existing sources of funding. To the extent federal requirements result in increased costs for states, the federal government should fund the cost of complying with the law.
- **Allow for date-forward implementation.** To comply with the act, states should only be required to issue compliant DL/IDs beginning on a certain date. All DL/IDs issued after that date would comply with the federal law, but individuals would not be required to obtain a new DL/ID until their existing DL/ID expires. This provision would not apply to non-federally compliant DL/IDs issued by a state.
- **Limit required electronic verification of documents.** The final rule identifies five systems states will be required to use to be compliant with the law: Social Security On-Line Verification (SSOLV); Electronic Verification of Vital Events Records (EVVER);

Systematic Alien Verification for Entitlements (SAVE); an all-drivers system run by states to ensure an applicant is not licensed in another state; and a system run by the U.S. Department of State to validate foreign passport information. Of these systems, only SSOLV and SAVE are nationally deployed and functioning. Because of uncertainty regarding how and whether the five electronic systems will work, how they will be integrated and how they will ensure the protection of data, their use should not be required by federal law or regulation. Rather, states should be permitted to use existing verification processes to comply with federal requirements.

- **Establish a unique symbol to indicate that a license or identification card complies with federal requirements.** States should retain the authority to issue DL/IDs that do not meet federal standards. In order to differentiate between DL/IDs that meet federal requirements and those that do not, DHS should work with states to designate a means to easily identify federally compliant DL/IDs.
- **Provide greater clarification and flexibility regarding physical security requirements.** Not all departments of motor vehicles issue DL/IDs through the same process; some use central issuance (CI), others use over-the-counter issuance (OTC) and some use a hybrid CI/OTC process. Therefore, DHS should allow states to use a combination of security features designed to protect the physical integrity of DL/IDs. Many states have processes in place to issue, maintain and protect DL/ID information. Federal law and accompanying regulations should provide flexibility in how states prevent tampering, counterfeiting or unauthorized duplication of DL/IDs for fraudulent purposes.
- **Establish minimum guidelines for the further protection of personally identifiable information.** DL/ID information is protected by federal and state Driver Privacy Protection Acts (collectively, DPPA). However, since DPPA was enacted well before Real ID, DHS should establish further minimum guidelines to address requirements to protect the security, confidentiality and integrity of personally identifiable information that could not have been contemplated at the time of DPPA enactment.
- **Establish a process to allow states greater flexibility in validating an applicant's identity under exceptional circumstances.** States should be permitted to establish a process to validate an applicant's identity in rare cases where the applicant is unable to present the documents specified in the act.
- **Recognize enhanced driver's licenses as being compliant with REAL ID.** Enhanced driver's licenses issued by states should be considered compliant with requirements for secure state DL/IDs.
- **Establish a demonstration program to evaluate electronic information sharing among states.** The hub system envisioned by DHS in the final REAL ID rule is a complex and potentially costly endeavor, and participation in the system should not be

federally required. Instead, the federal government should facilitate a demonstration program among a few states to determine projected costs for such a system, the appropriate governance structure for administrative purposes and the appropriate security and privacy measures to protect individuals' personal information.

- **Provide access to federal electronic systems.** Access to any federal electronic systems that states are required to use to comply with the act should be provided free of charge, just as the E-Verify system is made available to employers without cost.

#### **PROVIDING FOR ADDITIONAL SECURITY IN STATES' IDENTIFICATION ACT:**

In 2009, NGA supported S. 1261, the "Providing for Additional Security in States' Identification Act," (PASS ID) because it is built largely on governors' recommendations for solving the problems inherent to REAL ID.

For example, to address the issue of cost, PASS ID would have eliminated fees associated with the use of existing federally run databases that states must use to issue DL/IDs. It would also have allowed states to innovate to meet security requirements and eliminated the requirement to use electronic verification systems that do not yet exist or are not nationally deployed. If implemented, these changes would have combined to cut state costs of compliance from \$3.9 billion to approximately \$2 billion.

PASS ID also recognized that at the time only two of the electronic systems states must use under REAL ID existed and were nationally deployed: SAVE to verify immigration status and SSOLV to verify social security information.

Today little has changed; SAVE and SSOLV remain the only two systems available although an electronic system to verify passports should be fully operational later this year.

Work to develop an electronic database to share DL/IDs information among states is slow, with implementation of an operational state-to-state system not anticipated until 2015. A fully deployed and populated system will not be available to states until 2023.

Likewise, a national vital records database to check birth certificates remains unfunded and lacking for data. Specifically, the recent recession and lack of federal funds has prevented states from digitizing their records – a necessary step for making a national database a reality.

PASS ID recognized these shortcomings by not requiring states to use systems that do not exist. It also addressed privacy concerns by requiring procedures to prevent the unauthorized access to or sharing of information, as well as requiring public notice of privacy policies and the establishment of a redress process for individuals who believe their personal information should be amended in records systems.

Finally, PASS ID tied timelines for issuance and full implementation to the completion of final regulations. Although not a true date-forward implementation schedule as called for by NGA,

when combined with other enhancements, PASS ID would have allowed states to begin issuing compliant licenses and IDs faster than called for by REAL ID.

**CONCLUSION:**

Since its passage, governors have consistently offered constructive recommendations for implementing REAL ID. Governors have encouraged DHS and Congress to “fix” the act by implementing statutory or regulatory changes to make REAL ID feasible and cost-effective. They also have called on the federal government to “fund” REAL ID by providing federal dollars to offset state expenditures for meeting new federal standards.

If Congress wants to see REAL ID implemented, it needs to encourage and support the implementation of regulations and guidelines that make compliance a possibility. DHS has worked closely with states to understand the complexities of the DL/ID process and provide rules that encourage better and more secure DL/IDs in a more cost-effective and realistic manner. More, however, needs to be done.

Security of our nation is not a partisan issue. Every governor is a security governor. Every governor is interested in making government work. Governors look forward to continuing efforts with Congress and DHS to find workable, cost-effective solutions that can increase the security and integrity of all state license and identification systems.