

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. AKAKA (for himself and Mr. SUNUNU):

S. 4117. A bill to repeal title II of the REAL ID Act of 2005, to reinstitute the section 7212 of the Intelligence Reform and Terrorism Prevention Act of 2004, which provides States additional regulatory flexibility and funding authorization to more rapidly produce tamper- and counterfeit-resistant driver's licenses and to protect privacy and civil liberties by providing interested stakeholders on a negotiated rulemaking with guidance to achieve improved 21st century licenses to improve national security; to the Committee on the Judiciary.

Mr. AKAKA. Mr. President, I rise today to discuss the REAL ID Act of 2005.

The REAL ID Act became law over a year and a half ago, but opposition remains strong and vocal. I hold in my hand a list of hundreds of organizations—ranging from the National Governor's Association—NGA—to the American Civil Liberties Union—ACLU—to the National Rifle Association—that believe the REAL ID Act was a grave mistake. None of these groups were heard by Congress before the bill was passed in May 2005. There were no hearings to understand the repercussions of such sweeping legislation; and no debate on the floor of the Senate.

Rather, the REAL ID Act was attached to a must-pass piece of legislation, the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief Act—Public Law 109-13, in conference and therefore received virtually no scrutiny before passage. Every Member of Congress who supported providing much needed funding to our troops and relief to the Indonesia tsunami victims was forced to vote in favor of the REAL ID Act, an unrelated bill.

That is why I come to the floor today to spark a real debate on REAL ID. I say to my colleagues there are serious problems with REAL ID and it's time Congress took a closer look.

My two primary concerns with REAL ID are that the law: places an unrealistic and unfunded burden on state governments; and erodes Americans' civil liberties and privacy rights.

There is nothing realistic about REAL ID. This law mandates that State-issued IDs, such as driver's licenses, comply with certain security standards and procedures, as determined by the Department of Homeland Security—DHS—in order to be accepted by the Federal Government for such purposes as boarding an airplane or entering a Federal building. These procedures include electronically verifying the authenticity of each identifying document, such as birth certificates, passports, and social security cards, presented to a local Department of Motor Vehicles—DMV—office. Such a requirement likely will involve developing an extremely costly and complex set of electronic systems that connect the thousands of DMVs to one another and to a host of Federal agencies. This would cost \$1.42 billion according to a September 2006 report issued by the NGA, the National Conference of State Legislatures—NCSL—and the American Association of Motor Vehicle Administrators—AAMVA.

In addition, every current driver's license holder must be reenrolled under the new screening process which will more than double the workload at local DMVs across the country and far exceed their current capacity. REAL ID will put an end, at least temporarily, to online and mail license renewals and will cause huge lines and back-up at the DMV. Although security should never be sacrificed for convenience, it is important that states have the time and flexibility to implement the additional security standards in an effective manner. Moreover, reenrollment will be the mostly costly piece of REAL ID, estimated at approximately \$8 billion over 5 years by NGA, NCSL, and AAMVA.

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There are a number of other requirements imposed on states by REAL ID, such as new design requirements for the ID cards and on-site security. In total, REAL ID will cost over \$11 billion according to the NGA study. Congress has appropriated only \$40 million for REAL ID implementation to date, and no funds were included for fiscal year 2007. That leaves a hefty pricetag for the States, especially for legislation that was passed with no review.

In addition to the cost imposed on States, REAL ID imposes an unrealistic timeframe. Under the law, states must have REAL ID compliant systems in place by May 2008. Yet implementing regulations have not been issued. DHS is expected to issue the regulations early next year. However, as of today, the Office of Management and Budget, OMB, has not received the draft regulations, and OMB is allowed 90 days by Executive order for review of all proposed regulations. That would give states a little over a year to develop electronic verification systems, redesign driver's license cards, establish protocols on how to handle and secure personal information, increase DMV personnel, and find a way to fund it all. It has taken DHS over a year and a half just to issue the regulations. Expecting the States to execute the new system in even less time is unrealistic.

In addition to the unrealistic burden REAL ID places on States, REAL ID is a serious threat to our privacy rights and civil liberties.

The REAL ID Act will require each State's driver's licensing agency to collect and store substantial numbers of records containing licensees' most sensitive personally

identifiable information, including one's social security number, proof of residence, and biometric identifiers such as a digital photograph and signature. If the new State databases are compromised, they will provide one-stop access to virtually all information necessary to commit identity theft. Moreover, the sharing of the aggregated personally identifiable information of licensees between and amongst various government agencies and employees at the Federal, State, and local level, as contemplated by the REAL ID Act, potentially allows millions of individuals access to that information without protections or safeguards. The potential for the private sector to scan and share the information contained on a REAL ID compliant license exponentially increases the risk of identity theft as well. Despite these obvious threats to Americans' privacy, the REAL ID Act fails to mandate privacy protections for individuals' information nor does it provide States with the means to implement data security and antihacking protections that will be required to safeguard the new databases mandated by the act.

REAL ID exacerbates the threat of identity theft which threatens our security. As the Honolulu Star Bulletin noted in a October 1, 2006, editorial, the REAL ID Act gives us "a false sense of security."

I come to the floor today to inject some reality into REAL ID. Unfunded mandates, privacy, and security are real problems that deserve real consideration and real solutions. It is my hope that when DHS issues the REAL ID regulations, the following issues are addressed: (1) limiting access to the REAL ID networks; (2) securing data that is electronically stored on driver's licenses and ID cards; (3) allowing flexibility in the technological solutions employed by the States; (4) defining the role Federal agencies will play in developing and connecting with the electronic verification systems; (5) ensuring that individuals' privacy rights provided by the Federal Government and State governments are protected; (6) providing a means to correct inaccurate information held in the REAL ID networks; and (7) ensuring that the information contained in the license cannot be scanned or shared by private entities.

I hope that the regulations will be well thought out and reflect the stakeholder input provided to DHS over the past year and a half which included the issues I just raised.

However, given what I have heard from participants about the rule-making process thus far, I am concerned that the regulations are being developed by too few people without enough stakeholder engagement.

When DHS began this process, the State Working Group was developed to gather input from stakeholders. However, the engagement process was not as robust as it could have been. Participants in the working group never received feedback from DHS on their proposals and DHS never reconvened the group to evaluate a draft of the regulations.

I also am concerned that given the shortsightedness of the law DHS was given by Congress, it may be the case that a complete replacement of the REAL ID Act is necessary. I am looking to DHS to issue workable regulations. However, if our personal

privacy is not protected and the burden placed on states is too great, a legislative change to REAL ID may prove necessary.

Congress established a negotiated rulemaking process to improve the security of drivers licenses and ID cards in the Intelligence Reform and Terrorism Prevention Act of 2004. According to participants, that process was making headway when the REAL ID Act passed repealing the negotiated rulemaking language and imposing much stricter guidelines.

Today Senator Sununu and I introduce the Identification Security Enhancement Act, which will repeal the REAL ID Act and reinstitute the shared rulemaking and more reasonable guidelines established in the Intelligence Reform Act. It is my intention to review the forthcoming DHS regulations before pursuing any action on our bill. I am hopeful that new legislation will not be necessary, and I look forward to working with DHS to produce workable guidelines. However, I believe that introducing the Identification Security Enhancement Act now is important because it will send a message that the intent of the entirety of Congress is not reflected in the REAL ID Act.

Congress has a responsibility to ensure that driver's licenses and ID cards issued in the United States are secure—both from would-be terrorists and identity thieves—affordable, and practical. I ask my colleagues to join us in injecting reality into the REAL ID Act.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

#### **S. 4117**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### **SECTION 1. SHORT TITLE.**

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

#### **SEC. 2. REPEAL.**

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

#### **SEC. 3. DRIVER'S LICENSES AND PERSONAL IDENTIFICATION CARDS.**

(a) Definitions.—In this section:

(1) DRIVER'S LICENSE.—The term “driver's license” means a motor vehicle operator's license (as defined in section 30301(5) of title 49, United States Code).

(2) PERSONAL IDENTIFICATION CARD.—The term “personal identification card” means an

identification document (as defined in section 1028(d)(3) of title 18, United States Code) issued by a State.

(b) Standards for Acceptance by Federal Agencies.—

(1) IN GENERAL.—

(A) LIMITATION ON ACCEPTANCE.—No Federal agency may accept, for any official purpose, a driver's license or personal identification card newly issued by a State more than 2 years after the promulgation of the minimum standards under paragraph (2) unless the driver's license or personal identification card conforms to such minimum standards.

(B) DATE FOR FULL CONFORMANCE.—

(i) IN GENERAL.—Except as provided under clause (ii), beginning on the date that is 5 years after the promulgation of minimum standards under paragraph (2), no Federal agency may accept, for any official purpose, a driver's license or personal identification card issued by a State unless such driver's license or personal identification card conforms to such minimum standards.

(ii) ALTERNATIVE DATE FOR FULL CONFORMANCE.—If the Secretary of Homeland Security determines that it is impracticable for States to replace all State-issued driver's licenses and personal identification cards before the deadline set forth in clause (i), the Secretary of Homeland Security, in consultation with the Secretary of Transportation, may set a later, alternative deadline to the extent necessary for States to complete such replacement with reasonable efforts.

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(C) STATE CERTIFICATION.—

(i) IN GENERAL.—Each State shall certify to the Secretary of Homeland Security that the State is in compliance with the requirements of this section.

(ii) FREQUENCY.—Certifications under clause (i) shall be made at such intervals and in such a manner as the Secretary of Homeland Security, with the concurrence of the Secretary of Transportation, may prescribe by regulation.

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

(2) MINIMUM STANDARDS.—Not later than 12 months after the date of enactment of this Act, the Secretary of Homeland Security, in consultation with the Secretary of Transportation, shall by regulation, establish by minimum standards for driver's licenses or personal identification cards issued by a State for use by Federal agencies for identification purposes that shall include—

(A) standards for documentation required as proof of identity of an applicant for a driver's license or personal identification card;

(B) standards for the verifiability of documents used to obtain a driver's license or personal identification card;

(C) standards for the processing of applications for driver's licenses and personal identification cards to prevent fraud;

(D) standards for information to be included on each driver's license or personal identification card, including—

(i) the person's full legal name;

(ii) the person's date of birth;

(iii) the person's gender;

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

(v) a photograph of the person;

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

(vii) the person's signature;

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

(F) security standards to ensure that driver's licenses and personal identification cards are—

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

(ii) capable of accommodating and ensuring the security of a photograph or other unique identifier; and

(G) a requirement that a State confiscate a driver's license or personal identification card if any component or security feature of the license or identification card is compromised.

(c) Negotiated Rulemaking.—

(1) IN GENERAL.—Before publishing the proposed regulations required by subsection (b)(2) to carry out this title, the Secretary of Homeland Security shall establish a negotiated rulemaking process pursuant to subchapter IV of chapter 5 of title 5, United States Code (5 U.S.C. 561 et seq.).

(2) TIME REQUIREMENT.—The process described in paragraph (1) shall be conducted in a timely manner to ensure that—

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

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

(ii) includes an assessment of the benefits and costs of the recommendation; and

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

(3) REPRESENTATION ON NEGOTIATED RULEMAKING COMMITTEE.—Any negotiated rulemaking committee established by the Secretary of Homeland Security pursuant to paragraph (1) shall include equal numbers of representatives from—

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

(B) among State elected officials;

(C) the Department of Transportation; and

(D) among interested parties, including experts in privacy protection, experts in civil liberties and protection of constitutional rights, and experts in immigration law.

(4) CONTENT OF REGULATIONS.—The regulations required by subsection (b)(2)—

(A) shall facilitate communication between the chief driver licensing official of a State, an appropriate official of a Federal agency and other relevant officials, to verify the authenticity of documents, as appropriate, issued by such Federal agency or entity and presented to prove the identity of an individual;

(B) may not infringe on a State's power to set criteria concerning what categories of individuals are eligible to obtain a driver's license or personal identification card from that State;

(C) may not require a State to comply with any such regulation that conflicts with or otherwise interferes with the full enforcement of State criteria concerning the categories of individuals that are eligible to obtain a driver's license or personal identification card from that State;

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

(E) shall include procedures and requirements to protect the privacy rights of individuals who apply for and hold driver's licenses and personal identification cards.

(F) shall include procedures and requirements to protect the federal and state constitutional rights and civil liberties of individuals who apply for and hold driver's licenses and personal identification cards;

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

(H) shall provide individuals with procedural and substantive due process, including promulgating rules and rights of appeal, to challenge errors in data records contained within the databases created to implement this Act;

(I) shall not permit private entities to scan the information contained on the face of a license, or in the machine readable component of the license, and resell, share or trade that information with any other third parties, nor shall private entities be permitted to store the information collected for any other than fraud prevention purposes;

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

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

(d) Grants to States.—

(1) ASSISTANCE IN MEETING FEDERAL STANDARDS.—Beginning on the date a final regulation is promulgated under subsection (b)(2), the Secretary of Homeland Security shall award grants to States to assist them in conforming to the minimum standards for driver's licenses and personal identification cards set forth in the regulation.

(2) ALLOCATION OF GRANTS.—The Secretary of Homeland Security shall award grants to States under this subsection based on the proportion that the estimated average annual number of driver's licenses and personal identification cards issued by a State applying for a grant bears to the average annual number of such documents issued by all States.

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

(4) SEPARATE FUNDING.—Funds appropriated for grants under this section may not be commingled with other grant funds administered by the Department of Homeland Security and may not be used for any purpose other than the purpose set forth in paragraph (1).

(e) Extension of Effective Date.—The Secretary of Homeland Security may extend the date specified under subsection (b)(1)(A) for up to 2 years for driver's licenses issued by a State if the Secretary determines that the State made reasonable efforts to comply with the date under such subsection but was unable to do so.

#### **SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Secretary of Homeland Security \$300,000,000 for each of the fiscal years 2007 through 2013 to carry out this Act.

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