



Statement of Governor Jim Douglas

Before the Committee on Homeland Security and Governmental Affairs

United States Senate

“Identification Security: Reevaluating the Real ID Act”

July 15, 2009

Chairman Lieberman, Ranking Member Collins and distinguished members of the committee, my name is Jim Douglas, Governor of the state of Vermont and Vice Chair of the National Governors Association (NGA). I appreciate the opportunity to appear before you today to discuss the issues surrounding state implementation of REAL ID and to lend my support for the solutions presented by S. 1261, the “Providing for Additional Security in States’ Identification Act of 2009” or PASS ID.

OVERVIEW:

As governor, I am committed to providing my citizens with a driver’s license that is accurate and secure. In fact, having repeatedly discussed REAL ID with my fellow governors over the past several years, I can assure you 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 should 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 tend to view federal efforts to regulate state licenses such as REAL ID and PASS ID. In reviewing these measures, I’ve concluded that while the objectives of REAL ID are laudable, the law represents an unworkable and unfunded mandate that fails to make us more secure. In contrast, PASS ID builds on the strengths of REAL ID, resolves REAL ID’s weaknesses and delivers more cost-effective, common-sense solutions that can enhance the security and integrity of all driver licenses and state identification cards.

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 rule making to determine national standards for state driver’s license 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 who will be directly affected by changes to state systems.

More importantly, all of this must be done quickly. The next milestone for states is December 31 of this year. 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. I commend the Department of Homeland Security (DHS) and members of this committee like Senator Collins for their 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 12 states to pass laws prohibiting compliance with REAL ID, and another 9 states to pass joint resolutions calling for its repeal.

DEVELOPING A SOLUTION

Given states’ ongoing concerns, and the looming deadline for material compliance, governors last year asked NGA to work with state experts to fashion a solution to 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 license 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, which governors adopted during NGA’s winter meeting in February:

- **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.** In order 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 in order to be in compliance 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 the 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. Due to 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 utilize 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 of 2009

NGA supports S. 1261 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

eliminates fees associated with the use of existing federally run databases that states must use to issue DL/IDs. It also allows states to innovate to meet security requirements and eliminates the requirement to use electronic verification systems that do not yet exist or are not nationally deployed. These changes combine to cut state costs of compliance with PASS ID to approximately half that of REAL ID.

PASS ID also recognizes that currently only two of the electronic systems states must utilize under Real ID exist and are nationally deployed: SAVE to verify immigration status and SSOLV to verify social security information. PASS ID would require the use of these systems but eliminate the need to develop costly new data systems that raise significant privacy and fiscal concerns without providing a measurable increase in security. Current work to develop an electronic database to share DL/ID information among states would be continued under a demonstration project. This demonstration project will allow states to examine the privacy, cost and governance issues involved in the development and use of such a system prior to their voluntary participation.

Privacy concerns are addressed by PASS ID 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. As discussed above, PASS ID also eliminates the requirement to develop and use new electronic verification systems, a major concern of privacy right advocates.

Finally, PASS ID ties 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 allow states to begin issuing compliant licenses and IDs faster than called for by REAL ID.

REAL ID versus PASS ID in Vermont

In Vermont, we fully understand the need to ensure the integrity and security of the process by which we issue driver license and identification cards. Our state is working toward compliance with the law, but as enacted REAL ID poses significant challenges for our state. PASS ID will also require significant changes to our system, but its elimination of unnecessary systems and its cost make it a far better alternative.

One example in which both REAL ID and PASS ID pose a challenge for Vermont is with their requirement to have a photo on the license or ID. Although this provision is already the norm in most states, it actually presents Vermont with a significant challenge. Vermont was the last state to require a mandatory photo driver's license or identification card, and that did not come without a significant battle. Even when the legislation was adopted, local culture demanded that current licensees were "grandfathered" from the photo requirement. As a result, approximately 20 percent of our licensed drivers are still without a photo image on their license or identification document. Although the both REAL ID and PASS ID allow Vermont to continue to issue non-compliant driver's licenses that will not be valid for federal purposes, both laws still place Vermont in the awkward position of having to maintain a dual system in order to maintain its local culture and customs.

PASS ID is superior to REAL ID in terms of practical application and the likelihood of actual implementation. By eliminating the requirement to use national systems to check vital records, foreign passports and connect to all other motor vehicle departments in the country, PASS ID removes fiscal and operational uncertainties and will allow Vermont to issue compliant cards sooner. There exist significant challenges in developing the systems required by REAL ID and even greater doubt that the systems will be ready, reliable and nationally deployed in time for states to begin issuing fully compliant REAL IDs in 2011. In contrast, our state's processes for validating documents like birth certificates and ensuring only one license per driver are rigorous and reliable and PASS ID further underscores the need for our vigilance. Consequently, in Vermont we feel that we can achieve the same level of security called for by REAL ID and do it sooner under PASS ID.

In addition, PASS ID is more cost effective--a key consideration in these difficult fiscal times. The present cost estimate for states to implement REAL ID nationally is \$3.9 billion. In Vermont we estimate it will cost us at least \$20 million, meaningful dollars for a state our size and a severe roadblock to implementation of REAL ID. PASS ID eliminates unnecessary costs like the transaction charges for linking to and using federal systems, and authorizes some of the funding necessary for states to implement this program. These are giant steps towards covering the cost of compliance. In fact the National Governors Association, with the assistance of state stakeholders, estimates that PASS ID would cost approximately \$2 billion, half the cost of REAL ID.

One aspect of PASS ID that we particularly appreciate is the bill's explicit recognition of Enhanced Driver's Licenses (EDL). With Vermont's close ties to the Canadian Province of Quebec, we very much value the importance of having an open, but secure, border.

Vermont businesses both retain jobs and grow because of opportunities to sell products and services to our neighbors to the north. The United States and Canada enjoy the largest bilateral trading relationship in the world, with more than \$1.3 billion in goods and services crossing the border every day. In today's economic climate, a free and open border for Vermont manufacturers and retail businesses is more crucial than ever.

Earlier this year, Vermont began issuing EDLs that are valid land and sea border crossing documents under the Western Hemisphere Travel Initiative. The process to obtain an EDL is far more involved than a regular license, it includes:

- additional proofs of identity
- proof of citizenship
- one-on-one interviews with trained DMV security staff
- issuing staff have undergone FBI background checks and must be US citizens
- license produced in a secure factory and mailed to customers
- license contain Machine Readable Zones (MRZ) and Radio Frequency Identification (RFID) tags

The importance of Vermont's EDL being recognized as compliant with federal driver's license standards cannot be understated as Vermont's economic, environmental and cultural relationship with Quebec is of paramount importance. The EDL cost Vermont about \$1.5 million to implement, but more importantly the ease of border travel it creates is key to our economy and our relationship with Canada, Vermont's largest trading partner.

If the Vermont EDL were not recognized as REAL ID compliant, citizens would be faced with a difficult choice – either carry an EDL for land border crossings to Quebec or carry a REAL ID compliant card for flying and/or accessing Federal buildings. If Vermont's EDL is not compliant, it would become essentially useless as most customers would be better off obtaining a regular license and also maintaining a passport or passport card for border travel.

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.

PASS ID represents the type of commonsense solution governors have long sought. Governors support PASS ID because security of our nation is not a partisan issue. Every governor is a security governor. Every governor is interested in making government work. PASS ID represents a workable, cost-effective solution that can increase the security and integrity of all state license and identification systems.

On behalf of the National Governors Association, I would like to express governors' strong support for S. 1261 and encourage this committee to take up the legislation and report it favorably to the Senate as soon as possible.