

The Honorable Janet Napolitano

**Secretary
United States Department of Homeland Security**

**Testimony on
“Identification Security: Reevaluating the Real ID Act”**

**Before the
United States Senate
Committee on Homeland Security and Governmental Affairs**

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Chairman Lieberman, Senator Collins, and members of the Committee: Thank you for your leadership on homeland security issues, and thank you for holding this important hearing today on how the passage of the Providing Additional Security in States' Identification Act of 2009, also called PASS ID, will enhance our Nation's security. The Department of Homeland Security (DHS) provided technical assistance to PASS ID's Senate sponsors in drafting this bill, and we look forward to continue working with Congress on the bill as it moves through the legislative process. I urge this Committee to mark up PASS ID promptly so it can be considered by both houses of Congress and signed into law this calendar year.

PASS ID is a critical piece of national security legislation that will fix the REAL ID Act of 2005 and institute strong security standards for government-issued identification. PASS ID will fulfill a key recommendation of the 9/11 Commission, that the federal government set standards for identification such as driver's licenses and non-driver identification cards – and this bill will do so in a way that states will implement, rather than disregard. PASS ID will enact the same strong security standards set out by REAL ID as quickly as REAL ID – but, critically, this bill provides a workable way to get there.

We must work to keep terrorists and other criminals from obtaining false identification – and in order to do that, we need to have consistent, strong standards for identification documents that all states can implement. The 9/11 Commission was clear about this. But the REAL ID Act is unlikely to be implemented by the states as Congress intended, and a new approach is needed if we are to accomplish the law's goals.

As a former Governor and former chair of the National Governors Association, I can attest that the states strongly support the goals of the REAL ID Act, but many feel that they didn't have an adequate opportunity to help shape the law, and find it fundamentally flawed. Indeed, 12 states have so far passed legislation outright rejecting it, two states have passed legislation refusing to implement it without significant conditions being met, 11 states have passed resolutions opposing it, and many other states are refusing to implement it.¹ PASS ID was built with the states, maintaining strong security standards and introducing enough changes in implementing those same standards as to provide states a system in which they will participate. This, unlike the status quo, will yield the progress we need on secure identification.

PASS ID's Senate sponsors – Senators Akaka, Voinovich, Baucus, Carper, Leahy and Tester – along with the Department of Homeland Security and the National Governors Association (NGA), collaborated with state and local governments and law enforcement to draft a bill to fix REAL ID and institute strong standards for secure identification. PASS ID enjoys the support of Democrats and Republicans in Congress, Governors and state legislators throughout the country, and state, local and federal law enforcement groups. Governor Jim Douglas of Vermont, the incoming Chair of the NGA,

¹ Those states with laws prohibiting compliance with REAL ID are Alaska, Arizona, Idaho, Louisiana, Maine, Minnesota, Montana, New Hampshire, Oklahoma, Oregon, South Carolina, and Washington. Georgia and Virginia have more conditional laws prohibiting themselves from complying with REAL ID. Missouri's legislature has passed a bill prohibiting REAL ID implementation that is before the governor at the time of this testimony's submission. Arkansas, Colorado, Hawaii, Illinois, Missouri, Nebraska, Nevada, North Dakota, and South Dakota have passed concurrent or joint legislative resolutions in opposition to REAL ID. Pennsylvania's two legislative chambers have passed separate resolutions opposing it. The Michigan House has also passed a resolution against REAL ID.

and Sheriff Lee Baca from Los Angeles County are here to discuss the reasons why PASS ID has won support from the states and the law enforcement community.

The need for Congress to fix REAL ID is urgent. If Congress fails to enact new legislation, we will continue to have a law on the books that does not meet the security needs of our Nation. We cannot leave an important recommendation of the 9/11 Commission unfulfilled.

There is another urgent reason for acting quickly. As it currently stands, the next stage of REAL ID implementation – scheduled for the end of 2009 – would result in major complications for the residents of 12 states with anti-REAL ID laws, as well as for residents of other states that could refuse to implement REAL ID. The more than 40 million people living in those 12 states would be unable to use their driver’s licenses for official purposes such as boarding an airplane, even though no state will have issued a REAL ID-compliant document by that time.

In order to solve the problems of REAL ID, it is imperative that this Committee, and Congress as a whole, heed the call of Governors and law enforcement to enact the PASS ID Act promptly.

Why We Need Secure Identification

The ability to obtain fraudulent identification documents presents an opportunity for terrorists and other violent criminals to board airplanes, rent cars, open bank accounts, or conduct other activities without being detected. Law enforcement must be able to rely on government-issued identification documents. An officer must be able to know that the bearer of a government-issued ID is who he or she claims to be, and must have the ability to identify a fraudulent ID quickly.

We need nationwide standards because states vary widely in how they issue driver’s licenses and non-driver’s license identification cards produced by states’ motor vehicle departments, the two types of identification to which both REAL ID and PASS ID apply. (For shorthand, when I refer to “driver’s licenses” in this testimony, I mean both of those types of identification.) Nationwide security standards for IDs would give law enforcement officials the assurance that all IDs meet a high threshold of security. While fraudulent IDs play a major role in identity theft, illegal employment, and border crime, the most immediate reason we need to secure government-issued IDs is to thwart potential terrorists.

As you know, the ability of terrorists to obtain government-issued IDs played a significant role in the events leading to the attacks of September 11, 2001. According to the 9/11 Commission Report, “All but one of the 9/11 hijackers acquired some form of U.S. identification document, some by fraud.”² Preventing terrorists from obtaining these documents is critical to securing America against terrorism. As the 9/11 Commission noted, “For terrorists, travel documents are as important as weapons.”³

The 9/11 Commission recommended that the federal government work with other layers of government to solidify the security of government-issued IDs:

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

² *9/11 Commission Report*, p. 390

³ *9/11 Commission Report*, p. 384.

drivers 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.⁴

Improving government-issued IDs alone will not thwart every planned terrorist attack, but it presents an important obstacle to any potential terrorist operating in the United States and could aid law enforcement in stopping terrorist plots. Securing IDs is a common-sense national security imperative. The 9/11 Commission spelled out the need for the federal government and the states to take action together on this issue – a process that has been unduly hampered by the REAL ID Act.

Problems with the REAL ID Act

From the perspective of DHS, the major problem with REAL ID is that it is producing very little progress in terms of securing driver's licenses, and it is not getting us to where we need to be. Simply put, REAL ID is unrealistic. It presents major concerns to the states on a number of fronts, and when 12 states have so far outlawed themselves implementing REAL ID, there will never be effective national standards for identification until REAL ID is fixed.

Inflexible electronic verification requirements

A necessary part of increasing ID security is setting strong standards that states would need to meet in verifying the underlying documents a person presents when applying for a driver's license (for example, a birth certificate or driver's license from another state). REAL ID would require states to adopt new technologies in order to verify all those "identity source" documents electronically, including documents issued by other states.

This mandate is too rigid. Many of the required databases are simply not ready – and this requirement provides states little leeway to try to adopt more efficient and effective methods for data verification. Under REAL ID, the states would need to spend an estimated \$1.5 billion to electronically verify applicants' information and to upgrade their systems. States have bristled at being required to absorb this expense when they could take equally effective measures at less cost.

Inflexible re-enrollment system

Similarly, the process by which current driver's license holders renew their driver's licenses, presenting their source documents to enroll secure ID, is a critical part of any ID security initiative. But REAL ID issues inflexible mandates to the states on this score.

Current regulations impose a specific schedule for the states to re-enroll their 245 million driver's license holders. Under REAL ID, re-enrollment would need to be completed in a six-year window, from May 11, 2011 until December 1, 2017. The rule then requires that those under the age of 50 – about 60 percent of all license holders – re-enroll in the first three years of that window, by December 1, 2014.⁵

⁴ 9/11 Commission Report, p. 390.

⁵ Neither REAL ID nor PASS ID would require an individual to re-enroll if he or she does not want a compliant driver's license or non-driver's license ID, but that person would not be able to use a non-compliant driver's license or other non-compliant ID for official purposes.

So long as the Nation reaches the same goal, states should be allowed to find the most efficient and effective ways of expeditiously bringing their residents into a secure ID program based on their own renewal cycles and operations, rather than being forced to follow a rigid age-based plan. PASS ID, if enacted this year, would have states complete issuance by 2016, one year earlier than the current REAL ID schedule, but states retain the authority to meet that deadline as they see fit.

Higher costs than necessary

REAL ID would require an estimated \$3.96 billion for states to implement, yet minimal funds have been appropriated to the states for this purpose. When REAL ID passed in 2005, the states balked at accepting a mandate they had played no part in creating. Today, this hefty burden is made even more onerous by the economic conditions that are constricting state budgets.

Enhancing ID security by setting nationwide standards will be more expensive than the current system – there’s no question about it. But in specifically requiring how states meet security standards, rather than having states meet standards in the ways they deem most effective and efficient, REAL ID makes strong security standards more costly than they need to be. Mandating electronic verification or a specific re-enrollment schedule are examples of this.

No incentive to innovate

As is clear, the rigid mandates in the REAL ID Act provide states with little leeway to devise new or better systems to achieve the same security standards. Ideally, states would not merely meet security standards, but also exceed them, and accomplish this in new and better ways. States are laboratories for innovation in government and are best positioned to implement policies according to their operational considerations. Provided the states are on the path to meeting the same strong ID security standards, the federal government should allow flexibility in the means they choose to get there.

Inadequate privacy protections

Several provisions of REAL ID have raised substantial privacy concerns among citizens and state lawmakers. Specifically, REAL ID calls for states to provide electronic access to information contained in their motor vehicle databases to all other states. It is completely unclear how the law envisions this access to be used, much less monitored and managed to ensure privacy protections. Uncertainty about this provision has led to assumptions that REAL ID allows officials of any state to view an applicant’s personally identifiable information as part of a national system.

REAL ID lacks sufficient rules regarding who could access, share, or even sell personal information contained in the machine-readable barcode on a REAL ID-compliant document. The current law also lacks protections or procedures for individuals who want to change their data or correct erroneous data in records databases.

Costs of inaction

It is essential for Congress to act promptly to address concerns raised by REAL ID because not changing the law could result in major complications, especially for the residents of the 12 states with anti-REAL ID laws on the books. Due to the concerns

raised by states during the REAL ID rulemaking process, the Department has allowed for various extensions related to compliance. On March 1, 2007, the Department announced it would grant extensions to all states requesting extensions, not to exceed December 31, 2009. The Department has also announced that a second extension is available, but only to those states that have met certain benchmarks by December 31. These benchmarks include a certification by the state that it will comply with REAL ID.

Clearly, this is very problematic for states with anti-REAL ID laws and resolutions. In the 12 states with laws against REAL ID, the December 31 deadline means that residents of these states – who number more than 40 million – will not be able to use their driver's licenses for official purposes, such as boarding aircraft. The residents of Georgia and Virginia may also be affected by their states' less-conclusive anti-REAL ID laws. Eleven other states have passed legislative resolutions opposing REAL ID and could be affected. Together, all these states have 111 million residents, including more than 84 million adults, who could be affected by this deadline.

All in all, half the states have taken some kind of legislative stand against REAL ID and more have expressed serious reservations. Due to the significant budget problems facing all states, it is highly likely other states will also refuse to implement REAL ID. And, under REAL ID, residents of states that have indicated they will comply will be allowed to use their driver's licenses for boarding aircraft and other official purposes, despite the fact that their licenses may be no more secure than those issued by states that have refused to comply. This is because no state – including those without anti-REAL ID laws – will issue REAL IDs by the end of the year. Which driver's licenses are accepted and which are not would be based on a promise of future action, rather than on actual security differences between those driver's licenses. Such a situation would not advance our security, and underscores the need of Congress to act quickly.

The bottom line is that because of the states' objections to REAL ID, today – four years since its passage, five years after the 9/11 Commission Report, and nearly eight years after 9/11 – the United States has not realized secure identification. There has got to be a better way – and that is why I support the approach in PASS ID.

PASS ID: A Workable Model for Security Standards

The PASS ID Act establishes the ID security standards the Nation needs while fixing the problems of the REAL ID Act. A few individuals have responded to criticism of REAL ID by suggesting that any change in the law would weaken the standards it established. Such a criticism is just wrong. Strong security standards for driver's licenses remain the same in the two laws. The two laws are different only in that PASS ID is more nimble and provides a feasible way to achieve ID security. The changes PASS ID makes in directing how security standards are to be implemented are enough to bring the states on board and leave behind a status quo where the Nation has not made sufficient progress on secure identification.

Key similarities in PASS ID: Strong security standards called for by the 9/11 Commission

PASS ID will implement the recommendation of the 9/11 Commission that the federal government provide standards for the issuance of secure identification documents.

PASS ID would provide standards in fulfilling that recommendation that are just as strong as those in REAL ID.

- *Document verification* – PASS ID would maintain strong standards for ensuring the authenticity of identity source documents applicants show to obtain a driver’s license. States would be required to have sufficient processes in place to determine the authenticity of documents, including birth certificates or IDs issued by other states. PASS ID would require electronic verification through two federal databases that are used today – SSOLV for social security numbers and SAVE for immigration status.
- *Physical security of ID production* – PASS ID would require states to ensure the physical security of the means of driver’s license production, and to conduct background checks on employees who deal with driver’s license issuance, in order to reduce the chance of malfeasance and fraud. PASS ID would also require all such employees to be trained in fraudulent document detection. These standards remain unchanged from REAL ID.
- *Photographs of ID applicants* – PASS ID would necessitate that states capture photographs of individuals who apply for a PASS ID-compliant driver’s license, including those who are denied, clarifying a provision of REAL ID that states had said was unclear.
- *Requirements to show PASS IDs* – As under REAL ID, non-secure driver’s licenses would no longer be accepted at the end of the PASS ID implementation period in order to enter nuclear power plants; federal facilities dealing with national security, homeland security, or defense; and to board airplanes.⁶ PASS ID would not extend to federal locations where REAL ID could potentially have been applied but are openly accessible to the public, such as national parks.

All in all, PASS ID would match the security provided in REAL ID, while providing the states with more flexibility to innovate and meet the standards.

Key differences in PASS ID: Fixes problems in implementation, cost, and privacy

In addition to providing for security standards matching those of REAL ID, PASS ID provides a framework that is more workable from the state perspective.

- *Document verification* – PASS ID would require states to have adequate means of validating the underlying documents of a state-issued driver’s license. But unlike REAL ID, PASS ID would provide options to the states to make these determinations. While REAL ID mandates electronic verification for all source document information, PASS ID would maintain a focus on ensuring the authenticity of identity source documents that applicants present, allowing states to adopt cost-effective ways to achieve or exceed that threshold. This provision eliminates the need for every state to adopt expensive and unnecessary

⁶ Under PASS ID – the same as under REAL ID – a traveler who does not have a qualifying government-issued ID will be subject to greater scrutiny as Transportation Security Officers (TSO) determine his or her identity and confirm that the passenger is not on the Terrorist Screening Center’s watchlist. TSOs deal every day with travelers who have lost their identification or been victims of theft while on a trip. TSOs make an appropriate decision based on an assessment of available identification that a passenger may carry, or information that the passenger can provide.

technologies. DHS will continue to work with interested states in developing voluntary electronic verification capabilities, through a demonstration project that will help determine whether state-to-state electronic verification can become accurate and workable, and do so with the necessary privacy and security protections built in. Again, the flexibility of PASS ID allows us to proceed with national standards.

- *Lower potential costs* – Greater flexibility in several areas would substantially lower the potential cost to the states for implementing the program. These changes produce cost estimates for PASS ID significantly less than those for REAL ID, though the exact cost would depend on the particular systems states decide to adopt. The bill would also codify the current Driver's License Security Grant Program and specify that the funding is meant for PASS ID compliance, with \$50 million requested in the FY 2010 President's Budget Request.
- *Faster implementation and flexibility* – PASS ID could take effect faster than the current REAL ID schedule. States would have one year after the issuance of final DHS regulations to begin issuing compliant documents, and would have five years from that date to enroll driver's license holders as they see fit. The REAL ID deadline for completing issuance of compliant driver's licenses is December 2017. If Congress enacts the PASS ID Act as it is currently written by October 2009, states could complete enrollment by July 2016, a full one year and five months ahead of the REAL ID timetable. This is part of why taking action on PASS ID is urgent.
- *Privacy protections* – PASS ID would not require states to provide direct access to each other's driver's license databases; in fact, the bill contains protections against creating any national identity database containing all driver's license information and requires states to adopt adequate procedures to prevent unauthorized access to or sharing of personally identifiable information. PASS ID would also require public notice of privacy policies enacted under the law. The bill would establish a redress process for individuals who believe their personal information should be amended in records systems. Moreover, it would restrict private entities from selling or trading the personal information contained in the barcode of a PASS ID-compliant driver's license, and would prohibit private entities from scanning that portion unless it was specifically to support federal, state or local laws (such as purchasing a controlled substance or a weapon).

I want to emphasize that PASS ID accommodates any states that have already taken steps toward secure IDs under REAL ID. Despite the many problems of REAL ID, some states have made significant progress in the past four years on a number of fronts, including digitizing their records. PASS ID would not penalize these states and would allow states to keep either electronic or paper copies of their records. The states that have begun the process of digitization are already ahead of the game – digital records will certainly prove their worth in the long run. PASS ID is specifically designed not to penalize any states that made security advances under current law, but rather to allow states that have laws refusing to implement REAL ID to come back to the table.

All in all, PASS ID is the fix for REAL ID that the Nation needs: one that keeps strong security standards that are critical to our safety, but provides workable ways to

achieve those standards. The states have embraced the changes included in PASS ID, which provides the Nation the opportunity to make real progress on ID security.

Conclusion

As the 9/11 Commission expressed clearly and specifically, the need to advance ID security across the Nation is urgent. Today, nearly five years after that Commission recommended that ID security reforms begin in the United States, we have made little progress. The REAL ID Act, though well-intentioned, has caused a stalemate on an issue where we cannot afford to wait any longer.

It's time to break this impasse – and the approach taken under the PASS ID Act does just that. PASS ID improves upon REAL ID by maintaining high security standards while providing greater flexibility, reducing cost, accelerating implementation, protecting privacy, and promoting collaboration between the federal government and the states.

This is why PASS ID has a bipartisan and geographically diverse group of sponsors, has won support from the bipartisan National Governors Association, and has received the endorsement of the National Sheriffs Association, the Federal Law Enforcement Officers Association, and the Major Cities Chiefs Association. With the right legislation, working in partnership with law enforcement and the states, we can and will make progress on this important security issue.

Chairman Lieberman, Senator Collins, and members of the Committee: I urge you to join the Department of Homeland Security and our partners to support the approach taken under PASS ID. The time to act is now, given the deadlines involved, and we will continue working with you to address the specific language of the bill as it moves forward. Thank you for your continued partnership and for the opportunity to testify today. I can now answer any questions you have.