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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, on behalf of the National Governors Association (NGA), thank you for the opportunity to testify today regarding the PASS ID Act (S. 1261) and how it would enhance the security of all driver's licenses and identification cards.

Overview

The National Governors Association (NGA) is supportive of S. 1261, the Providing for Additional Security in States' Identification Act of 2009 (PASS ID), because it would address the primary concerns that have led 12 states to enact legislation prohibiting implementation of REAL ID and nine others to enact joint resolutions in opposition to REAL ID (see Appendix A). States' opposition stems from three long-standing state concerns: 1) REAL ID is a huge unfunded mandate; 2) the law's reliance on electronic data systems raises significant privacy concerns; and 3) the law is problematic if not impossible to implement.

In contrast to REAL ID, PASS ID was developed in close coordination with states and addresses states' concerns by eliminating unworkable requirements of REAL ID, providing states flexibility to use innovative solution to meet federal requirements, and allowing all states the opportunity to participate in a more secure system for driver's license and identification card (DL/ID) issuance.

With the support of the National Council of State Legislatures (NCSL), the American Association of Motor Vehicle Administrators (AAMVA), and other key law enforcement and technology organizations, PASS ID offers an opportunity to fix a broken system ahead of a looming deadline at the end of this year. Under the REAL ID regulations, states must meet 18 separate requirements in order for their DL/IDs to continue to be accepted for official purposes, such as boarding commercial aircraft. If PASS ID does not move forward before the end of this year, more than one-fifth of states' citizens could find they no longer have proper identification to board commercial aircraft as they return from their holiday travels on January 1, 2010.

History

On May 11, 2005, Congress passed the REAL ID Act as part of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief Act (P.L. 109-13), creating national standards for the issuance of state DL/IDs. The act establishes certain standards, procedures, and requirements that must be met by May 11, 2008, if state-issued DL/IDs are to be accepted as valid identification by the federal government.

While the act required compliance with its provisions by May 2008, the U.S. Department of Homeland Security (DHS) did not issue the final rule guiding implementation until January 11, 2008. The final rule incorporated many of the recommendations made by states, including the adoption of a 10-year compliance timeline that established milestones for states and provided some flexibility to manage the DL applicant pool, but maintained several requirements that pose significant challenges to states' compliance.

The final rule required states to be in compliance with REAL ID by May 11, 2008, unless the states received an extension from DHS. States were given until March 31, 2008 to request an extension. States were informed that if they did not negotiate an extension by the deadline, any

DL/IDs issued by that state would not be accepted for identification purposes to board commercial aircraft.

If states demonstrate they have achieved material compliance, but have not reached full compliance by December 31, 2009, they may request a second extension until May 11, 2011. After the 2011 deadline, states are expected to issue fully compliant REAL ID cards.

PASS ID: the Way Forward

REAL ID is not working. With one-fifth of states not participating in REAL ID, it does not fulfill the 9/11 Commission recommendation to enhance the security of all DL/IDs.

PASS ID offers a more secure path forward. It would keep the requirements of REAL ID that work while eliminating those that cannot be implemented. In doing so, PASS ID will offer those states with laws prohibiting compliance with REAL ID to participate in a more secure system for DL/ID issuance. PASS ID accomplishes this by making several key changes to reduce costs and strengthen privacy protections.

Cost – The Office of Management and Budget estimated in the final rule for REAL ID that the law would cost states \$3.9 billion over 11 years. To date, the Department of Homeland Security has distributed approximately \$130 million in grants to help defray states' costs. At a time when states across the country are facing a severe fiscal crisis and projected deficits of \$200 billion over the next two years, there simply are not the resources to meet the federal mandates in REAL ID.

PASS ID would reduce costs by eliminating the requirement to use three electronic databases that either do not exist or are not nationally deployed and in use by states. These databases (Electronic Verification of Vital Events, or EVVE, to verify vital records like birth certificates; a system to verify U.S. passport information; and a system to allow states to share DL/ID information with each other) are one of the primary cost drivers under REAL ID, and leave many unanswered questions including how the systems will be governed, how they will be maintained, their ultimate cost, and how they will protect personally identifiable information.

Rather than relying on costly new systems that raise significant fiscal and privacy concerns without providing a measurable increase in security, PASS ID would require states to utilize best practices that have been developed among states to authenticate applicants' information. PASS ID would retain the requirement that states verify legal status and social security information through the Systematic Alien Verification for Entitlements (SAVE) system and the Social Security On-Line Verification (SSOLV) system.

PASS ID also would eliminate the fees charged to states for the use of federal systems like SAVE and SSOLV. This change would bring the states' use of these databases in line with the private sector's use of systems such as E-Verify to check the legal status of job applicants. In addition, PASS ID would authorize the current DHS grant program to support state efforts to implement enhanced security measures for DL/IDs. This provision would ensure that all states receive a minimum amount of funding while allocating the remainder based on the relative

number of DL/IDs issued in a state and preserving flexibility for the Secretary to support innovative projects.

Utilizing OMB's cost estimates issued in the REAL ID final rule and information provided by states, NGA estimates that PASS ID could reduce the implementation costs of REAL ID by approximately half, from \$3.9 billion to close to \$2 billion.

Privacy – Another major area of concern with REAL ID is its requirement for the use of electronic databases and the expanded sharing of personally identifiable information. As discussed above, PASS ID would remove the requirement to utilize three electronic databases that either do not exist or are not nationally deployed. PASS ID, however, does continue work to develop these systems through a pilot program. For instance, the State of Mississippi is currently leading efforts to develop a “hub” system for states to share DL/ID information. PASS ID authorizes this to continue through a pilot program that will closely examine the governance, privacy, and cost issues that must be addressed in the development of any new system. Once these questions have been answered, states would have the option to participate in the systems.

In addition, PASS ID includes requirements to prevent the unauthorized access to or sharing of information; requires background checks for employees who will have access to personally identifiable information; and requires public notice of privacy policies and the establishment of a redress process for individuals who believe their personal information should be amended in state systems. PASS ID also would provide better protection of information contained in the DL/ID's bar code and would restrict the copying, trading, or sale of information on the bar code unless such use is consistent with federal, state, or local laws.

Common Misperceptions

Since its introduction, PASS ID has generated strong interest that has sometimes resulted in inaccurate reporting and analysis. I'd like to take this opportunity to clarify exactly what changes PASS ID would make to existing law and the impact these changes will have.

Appendix B includes a chart showing the 18 benchmarks required for material compliance under REAL ID and the changes made by PASS ID. As you'll see, PASS ID would continue to require all but two of these benchmarks. The following summarizes some of the key provisions of REAL ID that are retained by PASS ID:

- **Security Standards** – PASS ID would establish national security standards for DL/ID issuance, including multiple security features to protect the physical integrity of the identification document; requirements for the physical security of DL/ID issuance and processing facilities; requirements and standards pertaining to the identity documents that may be accepted by a state department of motor vehicles (DMV) from a DL/ID applicant; and record retention standards.
- **Legal Presence** – PASS ID retains the REAL ID requirement that a DL/ID applicant must be legally present in the United States. The categories of individuals eligible for a PASS ID are the same as those under REAL ID.

- ***Standards for Source Documents*** – REAL ID established national standards for source document verification that rely upon untested electronic systems that are not fully developed. For instance, while several states have begun utilizing the EVVE system to check birth records, the information contained in these databases is incomplete, and therefore, insufficient to allow for electronic verification in all cases.

PASS ID also establishes national standards for source document verification, including the use of federal databases to check legal status and social security information (SAVE and SSOLV). Rather than requiring the use of systems that are still under development and are unlikely to be deployed in time for states to meet the REAL ID deadlines, PASS ID requires the use of best practices to check such information through currently available means. PASS ID would continue to support the development of additional verification systems through a pilot program.

- ***Compliance Marking*** – PASS ID would require states to clearly mark DL/IDs that are compliant with the law’s requirements. PASS ID would eliminate an unnecessary requirement of REAL ID to mark non-compliant cards as non-compliant because it does not contribute to security.
- ***Implementation Timeline*** – Under REAL ID, states must be compliant with the 18 benchmarks by December 31, 2009, and must be fully compliant by May 11, 2011. Full compliance requires the use of the three electronic databases discussed above that are not implementable at this time. REAL ID then requires a tiered implementation timeline whereby states must ensure all residents age 50 or under have a compliant DL/ID by December 1, 2014, and all those over the age of 50 by December 1, 2017.

PASS ID ties implementation to the issuance of final regulations and could allow states to achieve compliance ahead of the REAL ID deadline. PASS ID requires DHS to issue final regulations within nine months of enactment. States must then begin issuing compliant DL/ID’s a year after final regulations and must complete enrollment five years after that. This means that if PASS ID is enacted this year, states would complete enrollment by September of 2016.

- ***One driver, one license*** – PASS ID would require states to utilize best practices that have been developed by DMVs to help ensure that individuals do not hold more than one DL/ID. REAL ID requires this be accomplished through the electronic sharing of state DL/ID information with other states through a “hub” system. This requirement, however, would impose significant costs, creates substantial privacy concerns, and has contributed to the enactment of state laws prohibiting compliance with REAL ID.
- ***Verification of Social Security Information*** – PASS ID retains the REAL ID requirement to verify applicants’ social security information with the federal government through the SSOLV database.

- **Official Purpose** – PASS ID clarifies the official purpose of REAL ID to make clear that an individual who does not present a compliant DL/ID at the airport may not be denied boarding a commercial aircraft solely due to the failure to present a compliant DL/ID. DHS has previously acknowledged that this would be the case under REAL ID.

Of the 18 benchmarks, PASS ID would eliminate two requirements that are not workable or that do not contribute to enhancing the security of DL/IDs. These are the requirements to commit to be in full compliance by May 2011 and to mark non-compliant DL/IDs as non-compliant. As discussed above, the deadlines under REAL ID are not workable. Therefore, PASS ID would replace the current timetable for compliance with one that states can actually implement. With respect to the requirement to mark non-compliant licenses as non-compliant, this is an unnecessary requirement of REAL ID that does not contribute to security. If a DL/ID does not contain the required marking to show that it is compliant, the DL/ID is, by default, not compliant.

Conclusion

REAL ID is broken and the uncertainty of its future leaves us all less secure. PASS ID would better protect safety and security by enhancing the integrity of all DL/IDs. PASS ID would not only enhance security, but it would do so at lower cost, with better privacy protections, and in greater coordination with key stakeholders.

On behalf of the nation's governors, I strongly urge your support for the PASS ID Act and urge the Committee to favorably report this legislation to the Senate as expeditiously as possible. While many states are moving forward in meeting the 18 benchmarks, full compliance with REAL ID will be difficult, if not impossible. As a critical deadline approaches at the end of this year, there is a great deal of uncertainty about the path forward. PASS ID will provide certainty and build upon the progress made to date.

Thank you for the opportunity to testify today. I am happy to answer any questions.

STATE OPPOSITION TO REAL ID

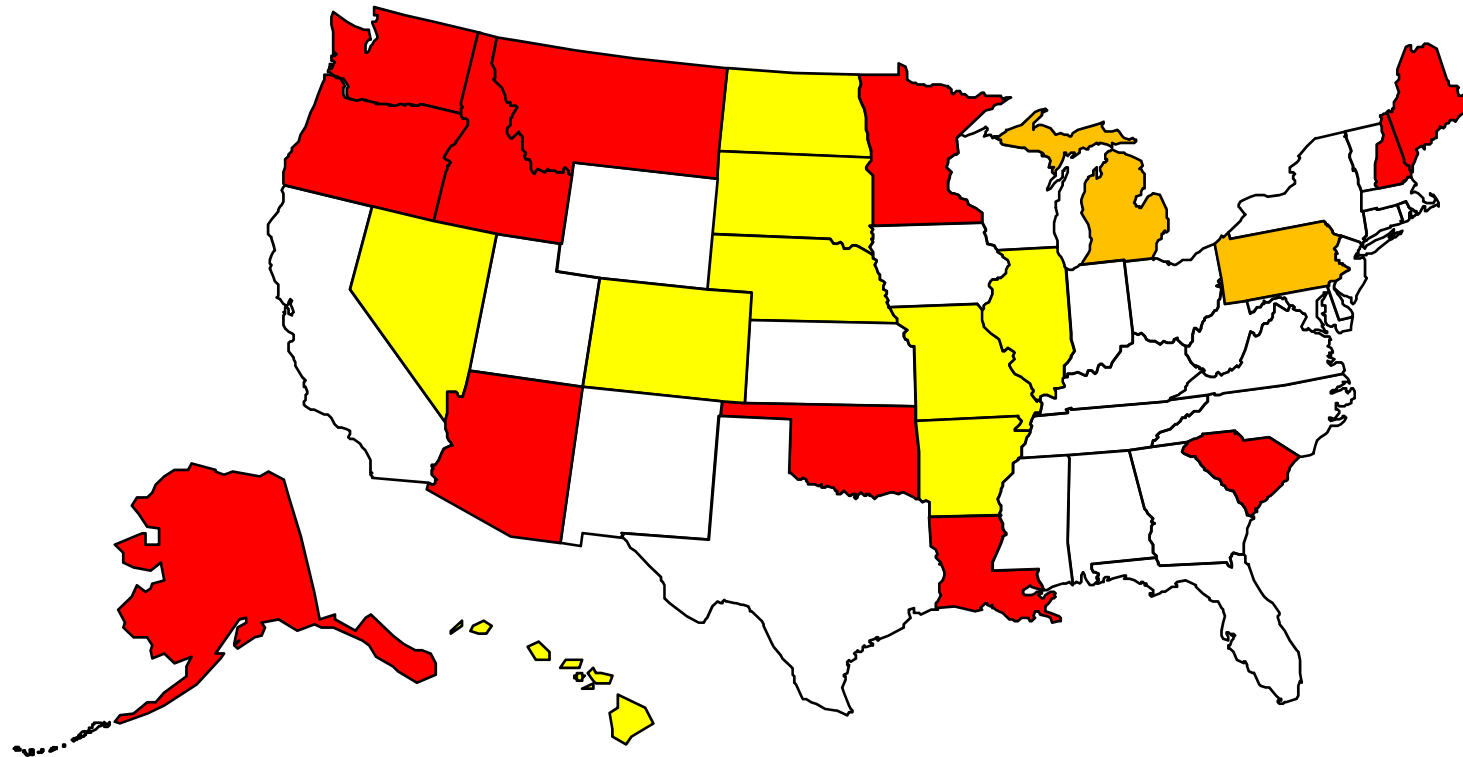
No to REAL ID



Jt. Resolution of Opposition



Hs. or Senate Res. of Opposition



18 Benchmarks

BENCHMARK NUMBER	BENCHMARK REQUIREMENTS	REAL ID	PASS ID	NOTES
1	Mandatory facial image capture which state must retain	✓	✓	Clarifies image can be captured when application is submitted. Allows electronic or hard copy storage of source documents
2	Applicant must sign a declaration under penalty of perjury that the information presented is true and correct	✓	✓	No change
3	Applicant must present at least one of a finite list of source documents when establishing identity	✓	✓	No change
4	Require documentation of: <ul style="list-style-type: none"> • Date of birth • Social Security Number • Address of principal residence • Evidence of lawful status 	✓	✓	No change
5	State must have a documented exceptions process	✓	✓	Move from regulations to statute
6	Make reasonable efforts to ensure that the applicant does not have more than one DL or ID	✓	✓	Change to reflect the use of best practices and the elimination of requirement to utilize a new driver's license "hub" database
7	Verify lawful status through SAVE	✓	✓	No change
8	Verify Social Security account numbers through SSOLV	✓	✓	No change
9	Issue DL and IDs that contain integrated security features	✓	✓	Change to conform to regulations
10	Surface of cards must include basic information regarding the cardholder	✓	✓	Change "full legal name" to "legal name"; move exceptions process for inclusion of address of principal residence on the card from regulations to statute
11	Mark fully compliant DL and IDs with a DHS-approved security marking	✓	✓	Change to conform to regulations
12	Issue temporary or limited-term licenses to all individuals with temporary lawful status and tie license validity to the end of lawful status	✓	✓	No change
13	Have a documented security plan for DMV operations	✓	✓	Change to conform to regulations
14	Have protections in place to ensure the security of personally identifiable information	✓	✓	Strengthened
15	Fraudulent document recognition training and security awareness for DMV employees	✓	✓	No change

BENCHMARK NUMBER	BENCHMARK REQUIREMENTS	REAL ID	PASS ID	NOTES
16	Background checks for employees with access to personally identifiable information	✓	✓	No change
17	Commit to be in full compliance with Subparts A through D on or before May 11, 2011	✓	X	Require states to begin issuing compliant DL/IDs one year after final regulations and to complete enrollment five years after that. Puts full implementation on track for 2016, as opposed to December 2017 under REAL ID
18	Clearly state on the face of non-compliant DLs or IDs that the card is not acceptable for official purposes, except for licenses renewed or reissued under § 37.27	✓	X	Require marking on compliant DL/IDs only