

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3471

To repeal title II of the REAL ID Act of 2005, to reinstitute 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.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 31, 2009

Mr. COHEN (for himself, Mr. HODES, Mr. STARK, Mr. FILNER, Mr. KUCINICH, and Mr. GONZALEZ) introduced the following bill; which was referred to the Committee on Oversight and Government Reform, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To repeal title II of the REAL ID Act of 2005, to reinstitute 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.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “REAL ID Repeal and  
5 Identification Security Enhancement Act of 2009”.

6 **SEC. 2. REPEAL.**

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8 Public Law 109–13; 49 U.S.C. 30301 note) is repealed.

9 **SEC. 3. DRIVER’S LICENSES AND PERSONAL IDENTIFICA-**  
10 **TION CARDS.**

11 (a) DEFINITIONS.—In this section:

12 (1) DRIVER’S LICENSE.—The term “driver’s li-  
13 cense” means a motor vehicle operator’s license (as  
14 defined in section 30301(5) of title 49, United  
15 States Code).

16 (2) PERSONAL IDENTIFICATION CARD.—The  
17 term “personal identification card” means an identi-  
18 fication document (as defined in section 1028(d)(3)  
19 of title 18, United States Code) issued by a State.

20 (b) STANDARDS FOR ACCEPTANCE BY FEDERAL  
21 AGENCIES.—

22 (1) IN GENERAL.—

23 (A) LIMITATION ON ACCEPTANCE.—No  
24 Federal agency may accept, for any official pur-  
25 pose, a driver’s license or personal identification

1 card newly issued by a State more than 2 years  
2 after the promulgation of the minimum stand-  
3 ards under paragraph (2) unless the driver's li-  
4 cense or personal identification card conforms  
5 to such minimum standards.

6 (B) DATE FOR FULL CONFORMANCE.—

7 (i) IN GENERAL.—Except as provided  
8 under clause (ii), beginning on the date  
9 that is 5 years after the promulgation of  
10 minimum standards under paragraph (2),  
11 no Federal agency may accept, for any of-  
12 ficial purpose, a driver's license or personal  
13 identification card issued by a State unless  
14 such driver's license or personal identifica-  
15 tion card conforms to such minimum  
16 standards.

17 (ii) ALTERNATIVE DATE FOR FULL  
18 CONFORMANCE.—If the Secretary of  
19 Homeland Security determines that it is  
20 impracticable for States to replace all  
21 State-issued driver's licenses and personal  
22 identification cards before the deadline set  
23 forth in clause (i), the Secretary of Home-  
24 land Security, in consultation with the Sec-  
25 retary of Transportation, may set a later,

1 alternative deadline to the extent necessary  
2 for States to complete such replacement  
3 with reasonable efforts.

4 (C) STATE CERTIFICATION.—

5 (i) IN GENERAL.—Each State shall  
6 certify to the Secretary of Homeland Secu-  
7 rity that the State is in compliance with  
8 the requirements of this section.

9 (ii) FREQUENCY.—Certifications  
10 under clause (i) shall be made at such in-  
11 tervals and in such a manner as the Sec-  
12 retary of Homeland Security, with the con-  
13 currence of the Secretary of Transpor-  
14 tation, may prescribe by regulation.

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

19 (2) MINIMUM STANDARDS.—Not later than 12  
20 months after the date of enactment of this Act, the  
21 Secretary of Homeland Security, in consultation  
22 with the Secretary of Transportation, shall by regu-  
23 lation, establish minimum standards for driver's li-  
24 censes or personal identification cards issued by a

1 State for use by Federal agencies for identification  
2 purposes that shall include—

3 (A) standards for documentation required  
4 as proof of identity of an applicant for a driv-  
5 er's license or personal identification card;

6 (B) standards for the verifiability of docu-  
7 ments used to obtain a driver's license or per-  
8 sonal identification card;

9 (C) standards for the processing of appli-  
10 cations for driver's licenses and personal identi-  
11 fication cards to prevent fraud;

12 (D) standards for information to be in-  
13 cluded on each driver's license or personal iden-  
14 tification card, including (consistent with such  
15 regulations)—

16 (i) the person's full legal name;

17 (ii) the person's date of birth;

18 (iii) the person's gender;

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

21 (v) a photograph of the person;

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

24 (vii) the person's signature;

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

5 (F) security standards to ensure that driv-  
6 er's licenses and personal identification cards  
7 are—

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

10 (ii) capable of accommodating and en-  
11 suring the security of a photograph or  
12 other unique identifier; and

13 (G) a requirement that a State confiscate  
14 a driver's license or personal identification card  
15 if any component or security feature of the li-  
16 cense or identification card is compromised.

17 (c) NEGOTIATED RULEMAKING.—

18 (1) IN GENERAL.—Before publishing the pro-  
19 posed regulations required by subsection (b)(2) to  
20 carry out this title, the Secretary of Homeland Secu-  
21 rity shall establish a negotiated rulemaking process  
22 pursuant to subchapter IV of chapter 5 of title 5,  
23 United States Code (5 U.S.C. 561 et seq.).

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

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

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

10                           (ii) includes an assessment of the ben-  
11                           efits and costs of the recommendation; and

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

15           (3) REPRESENTATION ON NEGOTIATED RULE-  
16           MAKING COMMITTEE.—Any negotiated rulemaking  
17           committee established by the Secretary of Homeland  
18           Security pursuant to paragraph (1) shall include  
19           representation from—

20                   (A) the Department of Transportation;

21                   (B) among State elected officials;

22                   (C) among State offices that issue driver's  
23           licenses or personal identification cards; and

24                   (D) among interested parties, including ex-  
25           perts in privacy protection, experts in civil lib-

1           erties and protection of constitutional rights,  
2           experts in immigration law, experts in fraud de-  
3           tection, and experts in vital records manage-  
4           ment.

5           (4) CONTENT OF REGULATIONS.—The regula-  
6           tions required by subsection (b)(2)—

7                   (A) shall facilitate communication between  
8                   the chief driver licensing official of a State, an  
9                   appropriate official of a Federal agency and  
10                  other relevant officials, to verify the authen-  
11                  ticity of documents, as appropriate, issued by  
12                  such Federal agency or entity and presented to  
13                  prove the identity of an individual;

14                  (B) may not infringe on a State’s power to  
15                  set criteria concerning what categories of indi-  
16                  viduals are eligible to obtain a driver’s license  
17                  or personal identification card from that State;

18                  (C) may not require a State to comply with  
19                  any such regulation that conflicts with or other-  
20                  wise interferes with the full enforcement of  
21                  State criteria concerning the categories of indi-  
22                  viduals that are eligible to obtain a driver’s li-  
23                  cense or personal identification card from that  
24                  State;



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

4 (E) shall include procedures and require-  
5 ments to protect the privacy rights of individ-  
6 uals who apply for and hold driver's licenses  
7 and personal identification cards;

8 (F) shall include procedures and require-  
9 ments to protect the Federal and State con-  
10 stitutional rights and civil liberties of individ-  
11 uals who apply for and hold driver's licenses  
12 and personal identification cards;

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

16 (H) shall provide individuals with proce-  
17 dural and substantive due process, including  
18 promulgating rules and rights of appeal, to  
19 challenge errors in data records contained with-  
20 in the databases created to implement this Act;

21 (I) shall not permit private entities to scan  
22 the information contained on the face of a li-  
23 cense, or in the machine readable component of  
24 the license, and resell, share, or trade that in-  
25 formation with any other third parties, nor

1 shall private entities be permitted to store the  
2 information collected for any other than fraud  
3 prevention purposes;

4 (J) shall not preempt State privacy laws  
5 that are more protective of personal privacy  
6 than the standards, or regulations promulgated  
7 to implement this Act;

8 (K) may provide for excluding from a driv-  
9 er's license or personal identification card an  
10 address of principal residence in circumstances  
11 which justify such an exclusion, such as for rea-  
12 sons of personal security of domestic violence  
13 victims or judges or other law enforcement offi-  
14 cials;

15 (L) shall not infringe on a State's power to  
16 reasonably accommodate a person's sincerely  
17 held religious belief in granting a driver's li-  
18 cense or personal identification card; and

19 (M) shall not require verification of birth  
20 certificates until a nationwide system is de-  
21 signed and implemented to facilitate such  
22 verification.

23 (d) GRANTS TO STATES.—

24 (1) ASSISTANCE IN MEETING FEDERAL STAND-  
25 ARDS.—Beginning on the date a final regulation is

1 promulgated under subsection (b)(2), the Secretary  
2 of Homeland Security shall award grants to States  
3 to assist them in conforming to the minimum stand-  
4 ards for driver’s licenses and personal identification  
5 cards set forth in the regulation.

6 (2) ALLOCATION OF GRANTS.—The Secretary  
7 of Homeland Security shall award grants to States  
8 under this subsection based on the proportion that  
9 the estimated average annual number of driver’s li-  
10 censes and personal identification cards issued by a  
11 State applying for a grant bears to the average an-  
12 nual number of such documents issued by all States.

13 (3) MINIMUM ALLOCATION.—Notwithstanding  
14 paragraph (2), each State shall receive not less than  
15 0.5 percent of the grant funds made available under  
16 this subsection.

17 (4) SEPARATE FUNDING.—Funds appropriated  
18 for grants under this section may not be commingled  
19 with other grant funds administered by the Depart-  
20 ment of Homeland Security and may not be used for  
21 any purpose other than the purpose set forth in  
22 paragraph (1).

23 (e) EXTENSION OF EFFECTIVE DATE.—The Sec-  
24 retary of Homeland Security may extend the date specified  
25 under subsection (b)(1)(A) for up to 2 years for driver’s

1 licenses issued by a State if the Secretary determines that  
2 the State made reasonable efforts to comply with the date  
3 under such subsection but was unable to do so.

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

5       There are authorized to be appropriated to the Sec-  
6 retary of Homeland Security \$300,000,000 for each of the  
7 fiscal years 2010 through 2017 to carry out this Act.

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