

Calendar No. 217111TH CONGRESS
1ST SESSION**S. 1261**

To repeal title II of the REAL ID Act of 2005 and amend title II of the Homeland Security Act of 2002 to better protect the security, confidentiality, and integrity of personally identifiable information collected by States when issuing driver's licenses and identification documents, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 15, 2009

Mr. AKAKA (for himself, Mr. VOINOVICH, Mr. LEAHY, Mr. TESTER, Mr. BAUCUS, Mr. CARPER, Mr. ALEXANDER, Mr. BURRIS, and Mr. LIEBERMAN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

NOVEMBER 19, 2009

Reported by Mr. LIEBERMAN, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To repeal title II of the REAL ID Act of 2005 and amend title II of the Homeland Security Act of 2002 to better protect the security, confidentiality, and integrity of personally identifiable information collected by States when issuing driver's licenses and identification documents, and for other purposes.

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 “Providing for Addi-
 5 tional Security in States’ Identification Act of 2009” or
 6 the “PASS ID Act”.

7 **SEC. 2. REPEAL.**

8 Title II of the REAL ID Act of 2005 (Division B
 9 of Public Law 109–13) is repealed.

10 **SEC. 3. IDENTIFICATION SECURITY.**

11 (a) IN GENERAL.—Title II of the Homeland Security
 12 Act of 2002 (6 U.S.C. 121 et seq.) is amended by adding
 13 at the end the following:

14 **“Subtitle E—Improved Security for**
 15 **Driver’s Licenses and Personal**
 16 **Identification Cards**

17 **“SEC. 241. DEFINITIONS.**

18 “In this subtitle:

19 “(1) DRIVER’S LICENSE.—The term ‘driver’s li-
 20 cense’ means a motor vehicle operator’s license, as
 21 defined in section 30301 of title 49, United States
 22 Code.

23 “(2) IDENTIFICATION CARD.—The term ‘identi-
 24 fication card’ means a personal identification card,

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

3 “(3) MATERIALLY COMPLIANT.—A State is
4 ‘materially compliant’ if the State has certified to
5 the Secretary that the State has commenced issuing
6 driver’s licenses and identification cards that are
7 compliant with the requirements of this subtitle.

8 “(4) OFFICIAL PURPOSE.—The term ‘official
9 purpose’ means—

10 “(A) accessing Federal facilities that con-
11 tain mission functions critical to homeland se-
12 curity, national security, or defense;

13 “(B) accessing nuclear power plants; or

14 “(C) boarding federally regulated commer-
15 cial aircraft.

16 “(5) SECRETARY.—The term ‘Secretary’ means
17 the Secretary of Homeland Security.

18 “(6) STATE.—The term ‘State’ means a State
19 of the United States, the District of Columbia, Puer-
20 to Rico, the Virgin Islands, Guam, American Samoa,
21 and the Commonwealth of the Northern Mariana Is-
22 lands.

1 **“SEC. 242. MINIMUM DOCUMENT REQUIREMENTS AND**
2 **ISSUANCE STANDARDS FOR FEDERAL REC-**
3 **OGNITION.**

4 **“(a) MINIMUM STANDARDS FOR FEDERAL USE.—**

5 **“(1) IN GENERAL.—**Beginning 1 year after the
6 date on which final regulations are issued to imple-
7 ment this subtitle, pursuant to section 5 of the
8 PASS ID Act—

9 **“(A)** a Federal agency may not accept, for
10 any official purpose, a driver’s license or identi-
11 fication card issued by a State to any person
12 unless the State is materially compliant; and

13 **“(B)** no person shall be denied boarding a
14 commercial aircraft solely on the basis of failure
15 to present a driver’s license or identification
16 card issued pursuant to this subtitle.

17 **“(2) AGENCY ACCEPTANCE.—**Beginning 6 years
18 after the date on which final regulations are issued
19 to implement this subtitle, pursuant to section 5 of
20 the PASS ID Act, a Federal agency may not accept,
21 for any official purpose, a driver’s license or identi-
22 fication card unless the license or card complies with
23 subsection (b).

24 **“(3) STATE CERTIFICATIONS.—**The Secretary
25 shall determine whether a State is meeting the re-
26 quirements of this section based on certifications

1 made by the State to the Secretary. Such certifi-
2 cations shall be made at such times and in such
3 manner as the Secretary, in consultation with the
4 Secretary of Transportation, may prescribe by regu-
5 lation.

6 “(4) CERTIFICATION OF OTHER IDENTIFICA-
7 TION DOCUMENTS.—The Secretary may certify any
8 driver’s license or identification card, including an
9 Enhanced Driver’s License designated by the Sec-
10 retary under section 7209 of the 9/11 Commission
11 Implementation Act of 2004, as compliant with the
12 requirements of this subtitle if the Secretary, after
13 review, determines such license or card meets the re-
14 quirements of this subtitle.

15 “(b) MINIMUM DOCUMENT REQUIREMENTS.—To
16 meet the requirements of this section, a State shall in-
17 clude, at a minimum, the following information and fea-
18 tures on each driver’s license and identification card
19 issued to a person by the State:

20 “(1) The person’s legal name.

21 “(2) The person’s date of birth.

22 “(3) The person’s gender.

23 “(4) The person’s driver’s license or identifica-
24 tion card number.

25 “(5) A digital photograph of the person.

1 “(6) The person’s address of principal resi-
2 dence, except—

3 “(A) as provided for under section 827 of
4 the Violence Against Women Act (Public Law
5 109–162); or

6 “(B) for any individual who a State deter-
7 mines should be exempted from the requirement
8 under this paragraph to protect the safety or
9 security of the applicant.

10 “(7) The person’s signature.

11 “(8) A combination of security features de-
12 signed to protect the physical integrity of the docu-
13 ment, including the prevention of tampering, coun-
14 terfeiting, or duplication of the document for fraudu-
15 lent purposes.

16 “(9) A common machine-readable technology,
17 containing the data elements available on the face of
18 a driver’s license or identification card. A person’s
19 social security number may not be included in these
20 data elements.

21 “(10) A unique symbol designated by the Sec-
22 retary to indicate compliance with the requirements
23 under this section.

24 “(c) MINIMUM ISSUANCE STANDARDS.—

1 ~~“(1) IN GENERAL.—To meet the requirements~~
2 ~~of this section, for all driver’s licenses and identifica-~~
3 ~~tion cards issued under this subtitle at least 1 year~~
4 ~~after the date on which final regulations are issued~~
5 ~~to implement this subtitle, pursuant to section 5 of~~
6 ~~the PASS ID Act, a State shall require, at a min-~~
7 ~~imum, presentation and validation of the following~~
8 ~~information before issuing a driver’s license or iden-~~
9 ~~tification card to a person:~~

10 ~~“(A) A photo identity document, except~~
11 ~~that a non-photo identity document is accept-~~
12 ~~able if it includes both the person’s full name~~
13 ~~and date of birth.~~

14 ~~“(B) Documentation showing the person’s~~
15 ~~date of birth.~~

16 ~~“(C) Proof of the person’s social security~~
17 ~~account number or verification that the person~~
18 ~~is not eligible for a social security account num-~~
19 ~~ber.~~

20 ~~“(D) Documentation showing the person’s~~
21 ~~name and address of principal residence.~~

22 ~~“(2) SPECIAL REQUIREMENTS.—~~

23 ~~“(A) IN GENERAL.—To meet the require-~~
24 ~~ments of this section, a State shall comply with~~
25 ~~the minimum standards of this paragraph.~~

1 “(B) EVIDENCE OF LAWFUL STATUS.—Be-
2 fore issuing a driver’s license or identification
3 card to a person, a State shall verify that the
4 person—

5 “(i) is a citizen or national of the
6 United States;

7 “(ii) has been granted lawful perma-
8 nent residence in the United States;

9 “(iii) has been granted asylum or
10 withholding of removal, or has been admit-
11 ted into the United States as a refugee;

12 “(iv) has been granted temporary resi-
13 dence in the United States;

14 “(v) has been paroled into the United
15 States under section 212(d)(5) of the Im-
16 migration and Nationality Act (8 U.S.C.
17 1182(d)(5)), subject to such exceptions as
18 the Secretary, in the Secretary’s
19 unreviewable discretion, may prescribe for
20 aliens paroled into the United States for
21 prosecution or other categories of paroled
22 aliens;

23 “(vi) is a lawful nonimmigrant in the
24 United States;

1 “(vii) has a pending application for
2 asylum or withholding of removal and has
3 been granted employment authorization;

4 “(viii) has been granted temporary
5 protected status in the United States or
6 has a pending application for temporary
7 protective status and has been granted em-
8 ployment authorization;

9 “(ix) has been granted deferred action
10 status;

11 “(x) has a pending application for ad-
12 justment of status to that of an alien law-
13 fully admitted for permanent residence in
14 the United States or conditional perma-
15 nent resident status in the United States;

16 “(xi) has otherwise been granted em-
17 ployment authorization in the United
18 States; or

19 “(xii) is otherwise an alien lawfully
20 present in the United States, as deter-
21 mined by the Secretary in the Secretary’s
22 unreviewable discretion.

23 “(C) TEMPORARY DRIVER’S LICENSES AND
24 IDENTIFICATION CARDS.—

1 “(i) IN GENERAL.—If a person pre-
2 sents evidence under any of clauses (iv)
3 through (xii) of subparagraph (B), the
4 State may only issue a temporary driver’s
5 license or temporary identification card to
6 the person that is valid for a time period
7 ending not later than the expiration date
8 of the applicant’s authorized stay in the
9 United States or, if there is no such expi-
10 ration date, for a period not to exceed 1
11 year. The Secretary may, in the Sec-
12 retary’s unreviewable discretion, authorize
13 the issuance of temporary driver’s licenses
14 or temporary identification cards, for peri-
15 ods longer than 1 year, to employees of
16 international organizations and to other
17 nonimmigrant aliens who are authorized to
18 remain in the United States for an indefi-
19 nite period.

20 “(ii) DISPLAY OF EXPIRATION
21 DATE.—A temporary driver’s license or
22 temporary identification card issued pursu-
23 ant to this subparagraph shall clearly state
24 the date on which it expires.

1 “(iii) RENEWAL.—A temporary driv-
 2 er’s license or temporary identification
 3 card issued pursuant to this subparagraph
 4 may be renewed only upon verification of
 5 the applicant’s current lawful status.

6 “(3) VALIDATION OF DOCUMENTS.—To meet
 7 the requirements of this section, a State—

8 “(A) shall not accept any foreign docu-
 9 ment, other than an official passport, to satisfy
 10 a requirement of paragraph (1) or (2); and

11 “(B) not later than 1 year after the date
 12 on which final regulations are issued to imple-
 13 ment this subtitle, pursuant to section 5 of the
 14 PASS ID Act, shall enter into a memorandum
 15 of understanding with the Secretary to rou-
 16 tinely utilize the automated system known as
 17 Systematic Alien Verification for Entitlements
 18 established under section 121 of the Immigra-
 19 tion Reform and Control Act of 1986 (Public
 20 Law 99–603), to verify the legal presence sta-
 21 tus of a person, other than a United States cit-
 22 izen or national, who is applying for a driver’s
 23 license or identification card.

24 “(d) OTHER REQUIREMENTS.—To meet the require-
 25 ments of this section, a State shall adopt the following

1 practices in the issuance of driver's licenses and identifica-
2 tion cards:

3 “(1)(A) Employ technology to capture digital
4 images of identity source documents so that the im-
5 ages can be retained in electronic storage in a
6 transferrable format for at least as long as the appli-
7 cable driver's license or identification card is valid;
8 or

9 “(B) retain paper copies of source documents
10 for at least as long as the applicable driver's license
11 or identification card is valid.

12 “(2) Subject each person who submits an appli-
13 cation for a driver's license or identification card to
14 mandatory facial image capture.

15 “(3) Establish an effective procedure to confirm
16 or verify a renewing applicant's information.

17 “(4) Confirm with the Social Security Adminis-
18 tration a social security account number presented
19 by a person using the full social security account
20 number. In the event that a social security account
21 number is already registered to or associated with
22 another person to which any State has issued a driv-
23 er's license or identification card, the State may use
24 any appropriate procedures to resolve nonmatches.

1 “(5) Establish an effective procedure to confirm
2 that a person submitting an application for a driv-
3 er’s license or identification card is terminating or
4 has terminated any driver’s license or identification
5 card issued pursuant to this section to such person
6 by a State.

7 “(6) Provide for the physical security of loca-
8 tions where driver’s licenses and identification cards
9 are produced and the security of document materials
10 and papers from which driver’s licenses and identi-
11 fication cards are produced.

12 “(7) Establish appropriate administrative and
13 physical safeguards to protect the security, confiden-
14 tiality, and integrity of personally identifiable infor-
15 mation collected and maintained at locations at
16 which driver’s licenses or identification documents
17 are produced or stored, including—

18 “(A) procedures to prevent the unauthor-
19 ized access to, or use of, personally identifiable
20 information;

21 “(B) public notice of security and privacy
22 policies, including the use, storage, access to,
23 and sharing of personally identifiable informa-
24 tion;

1 ~~“(C) the establishment of a process~~
2 ~~through which individuals may access, amend,~~
3 ~~and correct, as determined appropriate by the~~
4 ~~State, their own personally identifiable informa-~~
5 ~~tion.~~

6 ~~“(8) Subject all persons authorized to manufac-~~
7 ~~ture or produce driver’s licenses and identification~~
8 ~~cards to appropriate security clearance requirements.~~

9 ~~“(9) Establish fraudulent document recognition~~
10 ~~and document validation training programs for ap-~~
11 ~~propriate employees engaged in the issuance of driv-~~
12 ~~er’s licenses and identification cards.~~

13 ~~“(10) Limit the period of validity of all driver’s~~
14 ~~licenses and identification cards that are not tem-~~
15 ~~porary to a period that does not exceed 8 years.~~

16 ~~“(e) EXCEPTIONS PROCESS.—~~

17 ~~“(1) IN GENERAL.—States shall establish an~~
18 ~~exceptions process to reasonably accommodate per-~~
19 ~~sons who, for extraordinary reasons beyond their~~
20 ~~control, are unable to present the necessary docu-~~
21 ~~ments listed in subsection (e)(1).~~

22 ~~“(2) ALTERNATIVE DOCUMENTS.—Alternative~~
23 ~~documents accepted under an exceptions process es-~~
24 ~~tablished pursuant to paragraph (1) may not be~~
25 ~~used to demonstrate lawful presence under sub-~~

1 section (c)(2) unless such documents establish that
2 the person is a citizen or national of the United
3 States.

4 “(3) REPORT.—States shall include a report on
5 the use of exceptions made under this subsection,
6 which shall not include any personally identifiable
7 information, as a component of the certification re-
8 quired under subsection (a)(3).

9 “(f) USE OF FEDERAL SYSTEMS.—States shall not
10 be required to pay fees or other costs associated with the
11 use of the automated systems known as Systematic Alien
12 Verification for Entitlements and Social Security On-Line
13 Verification, or any other Federal electronic system, in
14 connection with the issuance of driver’s licenses or identi-
15 fication cards, in accordance with this subtitle.

16 “(g) RULE OF CONSTRUCTION.—Nothing in this sec-
17 tion shall be construed to prohibit a State from issuing
18 driver’s licenses and identification cards that do not com-
19 ply with the requirements of this section.

20 **“SEC. 243. USE OF FALSE DRIVER’S LICENSE AT AIRPORTS.**

21 “(a) IN GENERAL.—The Secretary shall enter, into
22 the appropriate aviation security screening database, ap-
23 propriate information regarding any person convicted of
24 using a false driver’s license at an airport.

25 “(b) DEFINITIONS.—In this section:

1 “(1) AIRPORT.—The term ‘airport’ has the
2 meaning given such term under section 40102 of
3 title 49, United States Code.

4 “(2) FALSE.—The term ‘false’ has the meaning
5 given such term under section 1028(d) of title 18,
6 United States Code.

7 **“SEC. 244. GRANTS TO STATES.**

8 “(a) ESTABLISHMENT.—

9 “(1) IN GENERAL.—There is established a
10 State Driver’s License Enhancement Grant Program
11 to award grants to assist States in conforming to
12 the minimum standards set forth in this subtitle.

13 “(2) DISTRIBUTION OF GRANTS.—The Sec-
14 retary, through the Administrator of the Federal
15 Emergency Management Agency, shall distribute
16 grants awarded under this section to States that
17 submit an application as follows:

18 “(A) PROPORTIONAL ALLOCATION.—Not
19 less than $\frac{2}{3}$ of the amounts appropriated for
20 grants under this section shall be allocated to
21 each State in the ratio that—

22 “(i) the number of driver’s licenses
23 and identification cards issued by such
24 State in the most recently ended calendar
25 year; bears to

1 “(ii) the number of driver’s licenses
2 and identifications cards issued by all
3 States in the most recently ended calendar
4 year.

5 “(B) REMAINING ALLOCATION.—The Sec-
6 retary may allocate to States any amounts ap-
7 propriated for grants under this section that
8 are not allocated under subparagraph (A) in
9 such manner as, in the Secretary’s discretion,
10 will most effectively assist in achieving the goals
11 of this subtitle.

12 “(C) MINIMUM ALLOCATION.—In allo-
13 cating funds under this section, the Secretary
14 shall ensure that for each fiscal year—

15 “(i) except as provided under clause
16 (ii), each State receives not less than an
17 amount equal to 0.35 percent of the total
18 funds appropriated for grants under this
19 section for that fiscal year; and

20 “(ii) American Samoa, the Common-
21 wealth of the Northern Mariana Islands,
22 Guam, and the Virgin Islands each receive
23 not less than an amount equal to 0.08 per-
24 cent of the total funds appropriated for

1 grants under this section for that fiscal
2 year.

3 “(b) **AUTHORIZATION OF APPROPRIATIONS.**—There
4 are authorized to be appropriated to the Secretary, for
5 each of the fiscal years 2010 through 2015, such sums
6 as may be necessary to carry out this section.

7 **“SEC. 245. STATE-TO-STATE ONE DRIVER, ONE LICENSE**
8 **DEMONSTRATION PROJECT.**

9 “(a) **ESTABLISHMENT.**—The Secretary, in consulta-
10 tion with the Secretary of Transportation, shall establish
11 a State-to-State 1 driver, 1 license demonstration project.

12 “(b) **PURPOSE.**—The demonstration project estab-
13 lished under this section shall include an evaluation of the
14 feasibility of establishing an electronic system to verify
15 that an applicant for a driver’s license or identification
16 card issued in accordance with this subtitle does not retain
17 a driver’s license or identification card issued in accord-
18 ance with this subtitle by another State.

19 “(c) **REQUIREMENTS.**—The demonstration project
20 shall include a review of—

21 “(1) the costs affiliated with establishing and
22 maintaining an electronic records system;

23 “(2) the security and privacy measures nec-
24 essary to protect the integrity and physical security
25 of driver’s licenses; and

1 “(3) the appropriate governance structure to
2 ensure effective management of the electronic
3 records system, including preventing the unauthor-
4 ized use of information in the system, and ensuring
5 the security and confidentiality of personally identifi-
6 able information.

7 “(d) SAVINGS PROVISION.—Nothing in this section
8 may be construed to—

9 “(1) authorize the creation of a national data-
10 base of driver’s license information; or

11 “(2) authorize States direct access to the motor
12 vehicle database of another State.

13 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
14 are authorized to be appropriated to the Secretary for
15 each of the fiscal years 2010 through 2012 such sums as
16 may be necessary to carry out this section.

17 **“SEC. 246. AUTHORITY.**

18 “(a) PARTICIPATION OF SECRETARY OF TRANSPOR-
19 TATION AND STATES.—All authority to issue regulations,
20 set standards, and issue grants under this subtitle shall
21 be carried out by the Secretary, in consultation with the
22 Secretary of Transportation and the States.

23 “(b) EXTENSIONS OF DEADLINES.—The Secretary
24 may grant to a State an extension of time to meet the

1 requirements of section 242(a)(1) if the State provides
 2 adequate justification for noncompliance.

3 **“SEC. 247. LIMITATION ON STATUTORY CONSTRUCTION.**

4 “Nothing in this subtitle may be construed to—

5 “(1) affect the authorities or responsibilities of
 6 the Secretary of Transportation or the States under
 7 chapter 303 of title 49, United States Code; or

8 “(2) preempt State privacy laws that are more
 9 protective of personal privacy than the requirements
 10 of this subtitle or the standards or regulations pro-
 11 mulgated to implement this subtitle, provided that
 12 such State laws are consistent with this subtitle and
 13 the regulations prescribed pursuant to this sub-
 14 title.”.

15 (b) **TECHNICAL AMENDMENT.**—Section 1(b) of the
 16 Homeland Security Act of 2002 (Public Law 107–296)
 17 is amended by inserting after the item relating to section
 18 235 the following:

“Subtitle E—Improved Security for Driver’s Licenses and Personal
 Identification Cards

“Sec. 241. Definitions.

“Sec. 242. Minimum document requirements and issuance standards for Fed-
 eral recognition.

“Sec. 243. Use of false driver’s license at airports.

“Sec. 244. Grants to States.

“Sec. 245. State-to-State one driver, one license demonstration project.

“Sec. 246. Authority.

“Sec. 247. Limitation on statutory construction.”.

1 **SEC. 4. USE OF DRIVER'S LICENSE OR IDENTIFICATION**
 2 **CARD DATA BY PRIVATE ENTITIES.**

3 Chapter 123 of title 18, United States Code is
 4 amended—

5 (1) in section 2722, by adding at the end the
 6 following:

7 “(e) **COPYING INFORMATION FROM DRIVERS LI-**
 8 **CENSES OR IDENTIFICATION CARDS.**—It shall be unlawful
 9 for any person, knowingly and without lawful authority—

10 “(1) to scan the information contained in the
 11 machine readable component of a driver's license or
 12 identification card; or

13 “(2)(A) to resell, share or trade that informa-
 14 tion with any other third parties;

15 “(B) track the use of a driver's license or iden-
 16 tification card; or

17 “(C) store the information collected.”;

18 (2) in section 2724(a), by inserting “driver's li-
 19 cense, or identification card,” after “motor vehicle
 20 record,”;

21 (3) in section 2725—

22 (A) by redesignating paragraph (2) as
 23 paragraph (6), and adding “and” at the end;

24 (B) by redesignating paragraph (3) as
 25 paragraph (7);

1 (C) by redesignating paragraph (4) as
2 paragraph (3), and striking “and” at the end;

3 (D) by redesignating paragraph (5) as
4 paragraph (2), and striking the period at the
5 end and inserting a semicolon;

6 (E) by redesignating paragraph (1) as
7 paragraph (5);

8 (F) by inserting before paragraph (2), as
9 redesignated, the following:

10 “(1) ‘driver’s license’ means a motor vehicle op-
11 erator’s license, as defined in section 30301 of title
12 49, United States Code;” and

13 (G) by inserting after paragraph (3), as re-
14 designated, the following:

15 “(4) ‘identification card’ means a personal iden-
16 tification card, as defined in section 1028(d) of title
17 18, United States Code, issued by a State.”.

18 **SEC. 5. RULEMAKING.**

19 (a) **IN GENERAL.**—Not later than 9 months after the
20 date of the enactment of this Act, the Secretary, after pro-
21 viding notice and an opportunity for public comment shall
22 issue final regulations to implement subtitle E of title II
23 of the Homeland Security Act of 2002, as added by section
24 3.

1 (b) ~~CONTENT.~~—The regulations issued pursuant to
2 subsection (a)—

3 (1) shall include procedures and requirements
4 that—

5 (A) protect the privacy rights of individ-
6 uals who apply for and hold a driver's license
7 or personal identification card;

8 (B) protect the constitutional rights and
9 civil liberties of individuals who apply for and
10 hold a driver's licenses or personal identification
11 card;

12 (2) shall include procedures to protect any per-
13 sonally identifiable information electronically trans-
14 mitted;

15 (3) shall establish a process through which indi-
16 viduals may access, amend, and correct, as deter-
17 mined appropriate by the Secretary, their own per-
18 sonally identifiable information in any Federal data-
19 bases used in complying with this Act;

20 (4) may not require a single design or num-
21 bering system to which driver's licenses or personal
22 identification cards issued by all States shall con-
23 form; and

24 (5) shall only apply to driver's licenses or iden-
25 tification cards issued pursuant to subtitle E of title

1 H of the Homeland Security Act of 2002, as added
 2 by section 3.

3 **SEC. 6. SAVINGS PROVISION.**

4 (a) ~~EFFECT OF REPEAL.~~—Nothing in section 2 shall
 5 affect the amendment or the repeal set forth in sections
 6 203(a) and 206 of the REAL ID Act of 2005.

7 (b) ~~EFFECT OF COMPLETED ADMINISTRATIVE AC-~~
 8 ~~TIONS.~~—Completed personnel actions, agreements, grants,
 9 and contracts undertaken by an agency—

10 (1) shall not be affected by any provision of this
 11 Act, or any amendment made by this Act; and

12 (2) shall continue in effect according to their
 13 terms until amended, modified, superseded, termi-
 14 nated, set aside, or revoked by an officer of the
 15 United States, by a court of competent jurisdiction,
 16 or by operation of law.

17 **SECTION 1. SHORT TITLE.**

18 *This Act may be cited as the “Providing for Additional*
 19 *Security in States’ Identification Act of 2009” or the*
 20 *“PASS ID Act”.*

21 **SEC. 2. REPEAL.**

22 *Title II of the REAL ID Act of 2005 (Division B of*
 23 *Public Law 109–13) is repealed.*

1 **SEC. 3. IDENTIFICATION SECURITY.**

2 (a) *IN GENERAL.*—*Title II of the Homeland Security*
 3 *Act of 2002 (6 U.S.C. 121 et seq.) is amended by adding*
 4 *at the end the following:*

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 6 **Driver’s Licenses and Personal**
 7 **Identification Cards**

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9 *“In this subtitle:*

10 (1) *DRIVER’S LICENSE.*—*The term ‘driver’s li-*
 11 *cence’ means a motor vehicle operator’s license, as de-*
 12 *finied in section 30301 of title 49, United States Code.*

13 (2) *IDENTIFICATION CARD.*—*The term ‘identi-*
 14 *fication card’ means a personal identification card,*
 15 *as defined in section 1028(d) of title 18, United*
 16 *States Code, issued by a State.*

17 (3) *MATERIALLY COMPLIANT.*—*A State is ‘ma-*
 18 *terially compliant’ if the State has certified to the*
 19 *Secretary that the State has commenced issuing driv-*
 20 *er’s licenses and identification cards that are compli-*
 21 *ant with the requirements of this subtitle.*

22 (4) *OFFICIAL PURPOSE.*—*The term ‘official*
 23 *purpose’ means—*

24 (A) *accessing Federal facilities that con-*
 25 *tain mission functions critical to homeland secu-*
 26 *rity, national security, or defense;*

1 “(B) accessing nuclear power plants; or

2 “(C) boarding federally regulated commer-
3 cial aircraft.

4 “(5) *SECRETARY*.—The term ‘Secretary’ means
5 the Secretary of Homeland Security.

6 “(6) *STATE*.—The term ‘State’ means a State of
7 the United States, the District of Columbia, Puerto
8 Rico, the Virgin Islands, Guam, American Samoa,
9 and the Commonwealth of the Northern Mariana Is-
10 lands.

11 **“SEC. 242. MINIMUM DOCUMENT REQUIREMENTS AND**
12 **ISSUANCE STANDARDS FOR FEDERAL REC-**
13 **OGNITION.**

14 “(a) *MINIMUM STANDARDS FOR FEDERAL USE*.—

15 “(1) *IN GENERAL*.—Beginning 1 year after the
16 date on which final regulations are issued to imple-
17 ment this subtitle, pursuant to section 5 of the *PASS*
18 *ID Act*, a Federal agency may not accept, for any of-
19 ficial purpose, a driver’s license or identification card
20 issued by a State to any person unless the State is
21 materially compliant.

22 “(2) *AGENCY ACCEPTANCE*.—Beginning 6 years
23 after the date on which final regulations are issued to
24 implement this subtitle, pursuant to section 5 of the
25 *PASS ID Act*, a Federal agency may not accept, for

1 *any official purpose, a driver’s license or identifica-*
2 *tion card unless the license or card complies with sub-*
3 *section (b).*

4 “(3) *STATE CERTIFICATIONS.*—*The Secretary*
5 *shall determine whether a State is meeting the re-*
6 *quirements of this section based on certifications*
7 *made by the State to the Secretary. Such certifi-*
8 *cations shall be made at such times and in such man-*
9 *ner as the Secretary, in consultation with the Sec-*
10 *retary of Transportation, may prescribe by regula-*
11 *tion.*

12 “(4) *CERTIFICATION OF OTHER IDENTIFICATION*
13 *DOCUMENTS.*—*The Secretary may certify any driver’s*
14 *license or identification card, including an Enhanced*
15 *Driver’s License designated by the Secretary under*
16 *section 7209 of the 9/11 Commission Implementation*
17 *Act of 2004, as compliant with the requirements of*
18 *this subtitle if the Secretary, after review, determines*
19 *such license or card meets the requirements of this*
20 *subtitle.*

21 “(5) *PERMISSION TO BOARD AIRCRAFT.*—*Any*
22 *person not presenting a driver’s license or identifica-*
23 *tion card issued pursuant to this subtitle may be per-*
24 *mitted to board a commercial aircraft or denied per-*
25 *mission to board such aircraft at the unreviewable*

1 *discretion of the Secretary or his or her designated se-*
2 *curity official.*

3 “(b) *MINIMUM DOCUMENT REQUIREMENTS.—To meet*
4 *the requirements of this section, a State shall include, at*
5 *a minimum, the following information and features on each*
6 *driver’s license and identification card issued to a person*
7 *by the State:*

8 “(1) *The person’s legal name.*

9 “(2) *The person’s date of birth.*

10 “(3) *The person’s gender.*

11 “(4) *The person’s driver’s license or identifica-*
12 *tion card number.*

13 “(5) *A digital photograph of the person.*

14 “(6) *The person’s address of principal residence,*
15 *except—*

16 “(A) *as provided for under section 827 of*
17 *the Violence Against Women Act (Public Law*
18 *109–162); or*

19 “(B) *for any individual who a State deter-*
20 *mines should be exempted from the requirement*
21 *under this paragraph to protect the safety or se-*
22 *curity of the applicant.*

23 “(7) *The person’s signature.*

24 “(8) *A combination of security features designed*
25 *to protect the physical integrity of the document, in-*

1 *cluding the prevention of tampering, counterfeiting,*
2 *or duplication of the document for fraudulent pur-*
3 *poses.*

4 *“(9) A common machine-readable technology,*
5 *containing the data elements available on the face of*
6 *a driver’s license or identification card. A person’s so-*
7 *cial security number may not be included in these*
8 *data elements.*

9 *“(10) A unique symbol designated by the Sec-*
10 *retary to indicate compliance with the requirements*
11 *under this section.*

12 *“(c) MINIMUM ISSUANCE STANDARDS.—*

13 *“(1) IN GENERAL.—To meet the requirements of*
14 *this section, for all driver’s licenses and identification*
15 *cards issued under this subtitle at least 1 year after*
16 *the date on which final regulations are issued to im-*
17 *plement this subtitle, pursuant to section 5 of the*
18 *PASS ID Act, a State shall require, at a minimum,*
19 *presentation and validation of the following informa-*
20 *tion before issuing a driver’s license or identification*
21 *card to a person:*

22 *“(A) A photo identity document, except that*
23 *a non-photo identity document is acceptable if it*
24 *includes both the person’s full name and date of*
25 *birth.*

1 “(B) Documentation showing the person’s
2 date of birth.

3 “(C) Proof of the person’s social security ac-
4 count number or verification that the person is
5 not eligible for a social security account number.

6 “(D) Documentation showing the person’s
7 name and address of principal residence.

8 “(2) SPECIAL REQUIREMENTS.—

9 “(A) IN GENERAL.—To meet the require-
10 ments of this section, a State shall comply with
11 the minimum standards of this paragraph.

12 “(B) CITIZENSHIP AND IMMIGRATION
13 VERIFICATION.—Before issuing a driver’s license
14 or identification card to a person, a State shall
15 verify that the person—

16 “(i) is a citizen or national of the
17 United States;

18 “(ii) is an alien lawfully admitted for
19 permanent residence in the United States;

20 “(iii) has an approved application for
21 asylum or withholding of removal in the
22 United States, or is an alien admitted to
23 the United States as a refugee;

24 “(iv) is an alien granted temporary
25 residence in the United States;

1 “(v) is an alien paroled into the
2 United States under section 212(d)(5) of the
3 Immigration and Nationality Act (8 U.S.C.
4 1182(d)(5)), subject to such exceptions as
5 the Secretary, in the Secretary’s
6 unreviewable discretion, may prescribe for
7 aliens paroled into the United States for
8 prosecution or other categories of paroled
9 aliens;

10 “(vi) is a lawful nonimmigrant in the
11 United States;

12 “(vii) has a pending application for
13 asylum or withholding of removal in the
14 United States and has been granted employ-
15 ment authorization;

16 “(viii) has temporary protected status
17 in the United States or has a pending ap-
18 plication for temporary protected status
19 and has been granted employment author-
20 ization;

21 “(ix) has deferred action in the United
22 States;

23 “(x) has a pending application for ad-
24 justment of status to that of an alien law-
25 fully admitted for permanent residence in

1 *the United States or conditional permanent*
2 *resident status in the United States;*

3 *“(xi) is otherwise authorized to be em-*
4 *ployed in the United States; or*

5 *“(xii) is otherwise an alien lawfully*
6 *present in the United States, as determined*
7 *by the Secretary in the Secretary’s*
8 *unreviewable discretion.*

9 *“(C) TEMPORARY DRIVER’S LICENSES AND*
10 *IDENTIFICATION CARDS.—*

11 *“(i) IN GENERAL.—If a person pre-*
12 *sents evidence under any of clauses (iv)*
13 *through (xii) of subparagraph (B), the State*
14 *may only issue a temporary driver’s license*
15 *or temporary identification card to the per-*
16 *son that is valid for a time period ending*
17 *not later than the expiration date of the ap-*
18 *plicant’s authorized stay in the United*
19 *States or, if there is no such expiration*
20 *date, for a period not to exceed 1 year. The*
21 *Secretary may, in the Secretary’s*
22 *unreviewable discretion, authorize the*
23 *issuance of temporary driver’s licenses or*
24 *temporary identification cards, for periods*
25 *longer than 1 year, to employees of inter-*

1 *national organizations and to other non-*
2 *immigrant aliens who are authorized to re-*
3 *main in the United States for an indefinite*
4 *period.*

5 “(ii) *DISPLAY OF EXPIRATION DATE.*—
6 *A temporary driver’s license or temporary*
7 *identification card issued pursuant to this*
8 *subparagraph shall clearly state the date on*
9 *which it expires.*

10 “(iii) *RENEWAL.*—*A temporary driv-*
11 *er’s license or temporary identification card*
12 *issued pursuant to this subparagraph may*
13 *be renewed only upon verification of the ap-*
14 *plicant’s current lawful status.*

15 “(3) *VALIDATION OF DOCUMENTS.*—*To meet the*
16 *requirements of this section, a State—*

17 “(A) *shall not accept any foreign document,*
18 *other than a valid, unexpired passport, to satisfy*
19 *a requirement of paragraph (1) or (2); and*

20 “(B) *not later than 1 year after the date on*
21 *which final regulations are issued to implement*
22 *this subtitle, pursuant to section 5 of the PASS*
23 *ID Act, shall enter into a memorandum of un-*
24 *derstanding with the Secretary to routinely uti-*
25 *lize the automated system known as Systematic*

1 *Alien Verification for Entitlements established*
2 *under section 121 of the Immigration Reform*
3 *and Control Act of 1986 (Public Law 99–603),*
4 *to verify the lawful presence of a person, other*
5 *than a United States citizen or national, who is*
6 *applying for a driver’s license or identification*
7 *card.*

8 “(d) *OTHER REQUIREMENTS.—To meet the require-*
9 *ments of this section, a State shall adopt the following prac-*
10 *tices in the issuance of driver’s licenses and identification*
11 *cards:*

12 “(1)(A) *Employ technology to capture digital*
13 *images of identity source documents so that the im-*
14 *ages can be retained in electronic storage in a*
15 *transferrable format for at least as long as the appli-*
16 *cable driver’s license or identification card is valid;*
17 *or*

18 “(B) *retain paper copies of source documents for*
19 *at least as long as the applicable driver’s license or*
20 *identification card is valid.*

21 “(2) *Subject each person who submits an appli-*
22 *cation for a driver’s license or identification card to*
23 *mandatory facial image capture.*

24 “(3) *Establish an effective procedure to confirm*
25 *or verify a renewing applicant’s information.*

1 “(4) Confirm with the Social Security Adminis-
2 tration a social security account number presented by
3 a person using the full social security account num-
4 ber. In the event that a social security account num-
5 ber is already registered to or associated with another
6 person to which any State has issued a driver’s li-
7 cense or identification card, the State may use any
8 appropriate procedures to resolve nonmatches.

9 “(5) Beginning not later than 6 years after the
10 day on which final regulations are issued to imple-
11 ment this subtitle, confirm, with the State of record,
12 date of birth information presented by a person to
13 meet the requirements under subsection (c)(1) after
14 the Secretary has determined that—

15 “(A) an electronic system exists and is ade-
16 quately deployed to allow States to receive reli-
17 able and real-time verification of date of birth
18 information from issuing States; and

19 “(B) the electronic system includes security
20 and privacy measures necessary to protect the se-
21 curity, confidentiality, and integrity of person-
22 ally identifiable information.

23 “(6) Establish an effective procedure to confirm
24 that a person submitting an application for a driver’s
25 license or identification card is terminating or has

1 *terminated any driver’s license or identification card*
2 *issued pursuant to this section to such person by a*
3 *State.*

4 “(7) *Provide for the physical security of loca-*
5 *tions where driver’s licenses and identification cards*
6 *are produced and the security of document materials*
7 *and papers from which driver’s licenses and identi-*
8 *fication cards are produced.*

9 “(8) *Establish appropriate administrative and*
10 *physical safeguards to protect the security, confiden-*
11 *tiality, and integrity of personally identifiable infor-*
12 *mation collected and maintained at locations at*
13 *which driver’s licenses or identification documents are*
14 *produced or stored, including—*

15 “(A) *procedures to prevent the unauthorized*
16 *access to, or use of, personally identifiable infor-*
17 *mation;*

18 “(B) *public notice of security and privacy*
19 *policies, including the use, storage, access to, and*
20 *sharing of personally identifiable information;*

21 “(C) *the establishment of a process through*
22 *which individuals may access, amend, and cor-*
23 *rect, as determined appropriate by the State,*
24 *their own personally identifiable information.*

1 “(9) *Subject all persons authorized to manufac-*
2 *ture or produce driver’s licenses and identification*
3 *cards to appropriate background check requirements.*

4 “(10) *Establish fraudulent document recognition*
5 *and document validation training programs for ap-*
6 *propriate employees engaged in the issuance of driv-*
7 *er’s licenses and identification cards.*

8 “(11) *Limit the period of validity of all driver’s*
9 *licenses and identification cards that are not tem-*
10 *porary to a period that does not exceed 8 years.*

11 “(e) *ASSESSMENTS.—The Secretary shall regularly as-*
12 *sess, not less frequently than annually, whether an elec-*
13 *tronic system—*

14 “(1) *exists and is adequately deployed to allow*
15 *States to receive reliable and real-time verification of*
16 *date of birth information from issuing States; and*

17 “(2) *includes security and privacy measures nec-*
18 *essary to protect the security, confidentiality, and in-*
19 *tegrity of personally identifiable information.*

20 “(f) *EXCEPTIONS PROCESS.—*

21 “(1) *IN GENERAL.—States shall establish an ex-*
22 *ceptions process to reasonably accommodate persons*
23 *who, for extraordinary reasons beyond their control,*
24 *are unable to present the necessary documents listed*
25 *in subsection (c)(1).*

1 “(2) *ALTERNATIVE DOCUMENTS.*—*Alternative*
2 *documents accepted under an exceptions process estab-*
3 *lished pursuant to paragraph (1) may not be used to*
4 *demonstrate lawful presence under subsection (c)(2)*
5 *unless such documents establish that the person is a*
6 *citizen or national of the United States.*

7 “(3) *REPORT.*—*States shall include a report on*
8 *the use of exceptions made under this subsection,*
9 *which shall not include any personally identifiable*
10 *information, as a component of the certification re-*
11 *quired under subsection (a)(3).*

12 “(g) *USE OF FEDERAL SYSTEMS.*—*States shall not be*
13 *required to pay fees or other costs associated with the use*
14 *of the automated systems known as Systematic Alien*
15 *Verification for Entitlements and Social Security On-Line*
16 *Verification, or any other Federal electronic system, in con-*
17 *nection with the issuance of driver’s licenses or identifica-*
18 *tion cards, in accordance with this subtitle.*

19 “(h) *RULE OF CONSTRUCTION.*—*Nothing in this sec-*
20 *tion shall be construed to prohibit a State from issuing*
21 *driver’s licenses and identification cards that do not comply*
22 *with the requirements of this section.*

23 “**SEC. 243. USE OF FALSE DRIVER’S LICENSE AT AIRPORTS.**

24 “(a) *IN GENERAL.*—*The Secretary shall enter, into the*
25 *appropriate aviation security screening database, appro-*

1 *priate information regarding any person convicted of using*
 2 *a false driver's license at an airport.*

3 “(b) *DEFINITIONS.—In this section:*

4 “(1) *AIRPORT.—The term ‘airport’ has the*
 5 *meaning given such term under section 40102 of title*
 6 *49, United States Code.*

7 “(2) *FALSE.—The term ‘false’ has the meaning*
 8 *given such term under section 1028(d) of title 18,*
 9 *United States Code.*

10 **“SEC. 244. GRANTS TO STATES.**

11 “(a) *STATE DRIVER’S LICENSE ENHANCEMENT GRANT*
 12 *PROGRAM.—*

13 “(1) *IN GENERAL.—There is established a State*
 14 *Driver’s License Enhancement Grant Program to*
 15 *award grants to assist States in conforming to the*
 16 *minimum standards set forth in this subtitle.*

17 “(2) *DISTRIBUTION OF GRANTS.—The Secretary,*
 18 *through the Administrator of the Federal Emergency*
 19 *Management Agency, shall distribute grants awarded*
 20 *under this section to States that submit an applica-*
 21 *tion as follows:*

22 “(A) *PROPORTIONAL ALLOCATION.—Not less*
 23 *than $\frac{2}{3}$ of the amounts appropriated for grants*
 24 *under this section shall be allocated to each State*
 25 *in the ratio that—*

1 “(i) *the number of driver’s licenses and*
2 *identification cards issued by such State in*
3 *the most recently ended calendar year; bears*
4 *to*

5 “(ii) *the number of driver’s licenses*
6 *and identifications cards issued by all*
7 *States in the most recently ended calendar*
8 *year.*

9 “(B) *REMAINING ALLOCATION.*—*The Sec-*
10 *retary may allocate to States any amounts ap-*
11 *propriated for grants under this section that are*
12 *not allocated under subparagraph (A) in such*
13 *manner as, in the Secretary’s discretion, will*
14 *most effectively assist in achieving the goals of*
15 *this subtitle.*

16 “(C) *MINIMUM ALLOCATION.*—*In allocating*
17 *funds under this section, the Secretary shall en-*
18 *sure that for each fiscal year—*

19 “(i) *except as provided under clause*
20 *(ii), each State receives not less than an*
21 *amount equal to 0.35 percent of the total*
22 *funds appropriated for grants under this*
23 *section for that fiscal year; and*

24 “(ii) *American Samoa, the Common-*
25 *wealth of the Northern Mariana Islands,*

1 *Guam, and the Virgin Islands each receive*
 2 *not less than an amount equal to 0.08 per-*
 3 *cent of the total funds appropriated for*
 4 *grants under this section for that fiscal*
 5 *year.*

6 “(3) *AUTHORIZATION OF APPROPRIATIONS.—*
 7 *There are authorized to be appropriated to the Sec-*
 8 *retary, for each of the fiscal years 2010 through 2015,*
 9 *such sums as may be necessary to carry out this sub-*
 10 *section.*

11 “(b) *VITAL RECORDS DIGITIZATION GRANT PRO-*
 12 *GRAM.—*

13 “(1) *IN GENERAL.—There is established a Vital*
 14 *Records Digitization Grant Program to award grants*
 15 *to assist States in—*

16 “(A) *digitizing and ensuring the accuracy*
 17 *of birth certificate information;*

18 “(B) *linking death records with birth*
 19 *records; and*

20 “(C) *electronically verifying birth records.*

21 “(2) *DISTRIBUTION OF GRANTS.—The Secretary,*
 22 *through the Administrator of the Federal Emergency*
 23 *Management Agency, and in coordination with the*
 24 *Secretary of Health and Human Services, shall dis-*
 25 *tribute grants awarded under this section to States*

1 *that submit an application certifying that all birth*
 2 *records issued in that State after 1934 will be*
 3 *digitized and accurate not later than 3 years after re-*
 4 *ceiving such grant.*

5 “(3) *AUTHORIZATION OF APPROPRIATIONS.—*
 6 *There are authorized to be appropriated to the Sec-*
 7 *retary \$150,000,000, for the 3-year period beginning*
 8 *on October 1, 2010, to carry out this subsection.*

9 **“SEC. 245. STATE-TO-STATE 1 DRIVER, 1 LICENSE DEM-**
 10 **ONSTRATION PROJECT.**

11 “(a) *ESTABLISHMENT.—The Secretary, in consulta-*
 12 *tion with the Secretary of Transportation, shall establish*
 13 *a State-to-State 1 driver, 1 license demonstration project.*

14 “(b) *PURPOSE.—The demonstration project established*
 15 *under this section shall include an evaluation of the feasi-*
 16 *bility of establishing an electronic system to verify that an*
 17 *applicant for a driver’s license or identification card issued*
 18 *in accordance with this subtitle does not retain a driver’s*
 19 *license or identification card issued in accordance with this*
 20 *subtitle by another State.*

21 “(c) *REQUIREMENTS.—The demonstration project*
 22 *shall include a review of—*

23 “(1) *the costs affiliated with establishing and*
 24 *maintaining an electronic records system;*

1 “(2) *the security and privacy measures necessary*
2 *to protect the integrity and physical security of driv-*
3 *er’s licenses; and*

4 “(3) *the appropriate governance structure to en-*
5 *sure effective management of the electronic records*
6 *system, including preventing the unauthorized use of*
7 *information in the system, and ensuring the security*
8 *and confidentiality of personally identifiable informa-*
9 *tion.*

10 “(d) *SAVINGS PROVISION.—Nothing in this section*
11 *may be construed to—*

12 “(1) *authorize the creation of a national data-*
13 *base of driver’s license information; or*

14 “(2) *authorize States direct access to the motor*
15 *vehicle database of another State.*

16 “(e) *AUTHORIZATION OF APPROPRIATIONS.—There are*
17 *authorized to be appropriated to the Secretary for each of*
18 *the fiscal years 2010 through 2012 such sums as may be*
19 *necessary to carry out this section.*

20 **“SEC. 246. AUTHORITY.**

21 “(a) *PARTICIPATION OF SECRETARY OF TRANSPOR-*
22 *TATION AND STATES.—All authority to issue regulations,*
23 *set standards, and issue grants under this subtitle shall be*
24 *carried out by the Secretary, in consultation with the Sec-*
25 *retary of Transportation and the States.*

1 “(b) *EXTENSIONS OF DEADLINES.*—*The Secretary*
 2 *may grant to a State an extension of time to meet the re-*
 3 *quirements of section 242(a)(1) if the State provides ade-*
 4 *quate justification for noncompliance.*

5 “**SEC. 247. LIMITATION ON STATUTORY CONSTRUCTION.**

6 “*Nothing in this subtitle may be construed to—*

7 “(1) *affect the authorities or responsibilities of*
 8 *the Secretary of Transportation or the States under*
 9 *chapter 303 of title 49, United States Code; or*

10 “(2) *preempt State privacy laws that are more*
 11 *protective of personal privacy than the requirements*
 12 *of this subtitle or the standards or regulations pro-*
 13 *mulgated to implement this subtitle, provided that*
 14 *such State laws are consistent with this subtitle and*
 15 *the regulations prescribed pursuant to this subtitle.”.*

16 “(b) *TECHNICAL AMENDMENT.*—*Section 1(b) of the*
 17 *Homeland Security Act of 2002 (Public Law 107–296) is*
 18 *amended by inserting after the item relating to section 235*
 19 *the following:*

*“Subtitle E—Improved Security for Driver’s Licenses and Personal
 Identification Cards*

“Sec. 241. Definitions.

*“Sec. 242. Minimum document requirements and issuance standards for Federal
 recognition.*

“Sec. 243. Use of false driver’s license at airports.

“Sec. 244. Grants to States.

“Sec. 245. State-to-State one driver, one license demonstration project.

“Sec. 246. Authority.

“Sec. 247. Limitation on statutory construction.”.

1 **SEC. 4. USE OF DRIVER'S LICENSE OR IDENTIFICATION**
 2 **CARD DATA BY PRIVATE ENTITIES.**

3 *Chapter 123 of title 18, United States Code is amend-*
 4 *ed—*

5 *(1) in section 2722, by adding at the end the fol-*
 6 *lowing:*

7 *“(c) SCANNING INFORMATION FROM DRIVERS LI-*
 8 *CENSES OR IDENTIFICATION CARDS.—*

9 *“(1) IN GENERAL.—Except as provided in para-*
 10 *graph (2), and unless authorized by Federal, State, or*
 11 *local law, beginning 6 months after the date on which*
 12 *final regulations are issued under paragraph (2), it*
 13 *shall be unlawful for any person, knowingly and*
 14 *without lawful authority—*

15 *“(A) to scan the information contained in*
 16 *the machine readable component of a driver's li-*
 17 *cence or identification card; and*

18 *“(B)(i) to resell, share or trade that infor-*
 19 *mation with any other third parties;*

20 *“(ii) track the use of a driver's license or*
 21 *identification card; or*

22 *“(iii) store the information collected.*

23 *“(2) EXCEPTIONS.—*

24 *“(A) IN GENERAL.—Not later than 2 years*
 25 *after the date of the enactment of the PASS ID*
 26 *Act, the Federal Trade Commission, after pro-*

1 *viding notice and an opportunity for public*
2 *comment, shall issue final regulations that pro-*
3 *vide exceptions to the prohibition under para-*
4 *graph (1) for acceptable uses of information de-*
5 *rived from the machine readable component of a*
6 *driver’s license or identification card for pur-*
7 *poses including preventing fraud, abuse, or*
8 *criminal activity.*

9 “(B) *ACCEPTABLE USES.*—*Acceptable uses*
10 *under subparagraph (A) shall protect the pri-*
11 *vacv and security of the driver’s license or iden-*
12 *tification card holder and shall include—*

13 *“(i) scanning and sharing personal in-*
14 *formation for credit checks;*

15 *“(ii) scanning and sharing, tracking,*
16 *or storing personal information for law en-*
17 *forcement purposes;*

18 *“(iii) scanning and storing informa-*
19 *tion to prevent consumer fraud;*

20 *“(iv) scanning and sharing the infor-*
21 *mation between Federal, State, and local*
22 *agencies, in accordance with section 552a of*
23 *title 5, United States Code, and other laws*
24 *relevant to the protection of the privacy of*
25 *the individual; and*

1 “(v) scanning and using the informa-
2 tion for a purpose for which the driver’s li-
3 cense or identification card holder has given
4 express written consent.”;

5 (2) in section 2724(a), by inserting “driver’s li-
6 cense, or identification card,” after “motor vehicle
7 record,”;

8 (3) in section 2725—

9 (A) by redesignating paragraph (2) as
10 paragraph (6), and adding “and” at the end;

11 (B) by redesignating paragraph (3) as
12 paragraph (7);

13 (C) by redesignating paragraph (4) as
14 paragraph (3), and striking “and” at the end;

15 (D) by redesignating paragraph (5) as
16 paragraph (2), and striking the period at the
17 end and inserting a semicolon;

18 (E) by redesignating paragraph (1) as
19 paragraph (5);

20 (F) by inserting before paragraph (2), as
21 redesignated, the following:

22 “(1) ‘driver’s license’ means a motor vehicle op-
23 erator’s license, as defined in section 30301 of title 49,
24 United States Code;” and

1 (G) by inserting after paragraph (3), as re-
2 designated, the following:

3 “(4) ‘identification card’ means a personal iden-
4 tification card, as defined in section 1028(d) of title
5 18, United States Code, issued by a State.”.

6 **SEC. 5. RULEMAKING.**

7 (a) *IN GENERAL.*—Notwithstanding chapter 5 of title
8 5, United States Code, or any other provision of law, not
9 later than 9 months after the date of the enactment of this
10 Act, the Secretary of Homeland Security shall issue interim
11 final regulations to implement subtitle E of title II of the
12 Homeland Security Act of 2002, as added by section 3.

13 (b) *CONTENT.*—The regulations issued pursuant to
14 subsection (a)—

15 (1) shall include procedures and requirements
16 that—

17 (A) protect the privacy rights of individuals
18 who apply for and hold a driver’s license or per-
19 sonal identification card;

20 (B) protect the constitutional rights and
21 civil liberties of individuals who apply for and
22 hold a driver’s licenses or personal identification
23 card;

1 (2) shall include procedures to protect any per-
2 sonally identifiable information electronically trans-
3 mitted;

4 (3) shall establish a process, if not already estab-
5 lished under the Privacy Act, through which individ-
6 uals may access, amend, and correct, as determined
7 appropriate by the agency managing the system, their
8 own personally identifiable information in any Fed-
9 eral databases used in complying with this Act;

10 (4) may not require a single design or num-
11 bering system to which driver's licenses or personal
12 identification cards issued by all States shall con-
13 form; and

14 (5) shall only apply to driver's licenses or identi-
15 fication cards issued pursuant to subtitle E of title II
16 of the Homeland Security Act of 2002, as added by
17 section 3.

18 **SEC. 6. SAVINGS PROVISION.**

19 (a) *EFFECT OF REPEAL.*—Nothing in section 2 shall
20 affect the amendment or the repeal set forth in sections
21 203(a) and 206 of the REAL ID Act of 2005.

22 (b) *EFFECT OF COMPLETED ADMINISTRATIVE AC-*
23 *TIONS.*—Completed personnel actions, agreements, grants,
24 and contracts undertaken by an agency—

1 (1) shall not be affected by any provision of this
2 Act, or any amendment made by this Act; and

3 (2) shall continue in effect according to their
4 terms until amended, modified, superseded, termi-
5 nated, set aside, or revoked by an officer of the United
6 States, by a court of competent jurisdiction, or by op-
7 eration of law.

8 **SEC. 7. ANNUAL PRIVACY REPORT.**

9 Not later than 1 year after the date of the enactment
10 of this Act, and annually thereafter, the Secretary of Home-
11 land Security, acting through the Chief Privacy Officer and
12 the Civil Rights and Civil Liberties Officer, shall submit
13 a report to the Committee on Homeland Security and Gov-
14 ernmental Affairs of the Senate and the Committee on
15 Homeland Security of the House of Representatives that
16 analyzes the privacy implications of the implementation of
17 this Act.

Calendar No. 217

111TH CONGRESS
1ST Session

S. 1261

A BILL

To repeal title II of the REAL ID Act of 2005 and amend title II of the Homeland Security Act of 2002 to better protect the security, confidentiality, and integrity of personally identifiable information collected by States when issuing driver's licenses and identification documents, and for other purposes.

NOVEMBER 19, 2009

Reported with an amendment