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. Vojnovich, Mr. Leahy, Mr. Tester, Mr. Baucus, and Mr. Carper) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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,
SECTION 1. SHORT TITLE.

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

SEC. 2. REPEAL.

Title II of the REAL ID Act of 2005 (Division B of Public Law 109–13) is repealed.

SEC. 3. IDENTIFICATION SECURITY.

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

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

“SEC. 241. DEFINITIONS.

“In this subtitle:

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

“(2) IDENTIFICATION CARD.—The term ‘identification card’ means a personal identification card, as defined in section 1028(d) of title 18, United States Code, issued by a State.

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

“(4) **Official purpose.**—The term ‘official
purpose’ means—

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

“(B) accessing nuclear power plants; or

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

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

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

**SEC. 242. MINIMUM DOCUMENT REQUIREMENTS AND
ISSUANCE STANDARDS FOR FEDERAL RECO-
GNITION.**

“(a) **Minimum Standards for Federal Use.**—

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

“(A) a Federal agency may not accept, for
any official purpose, a driver’s license or identi-

cification card issued by a State to any person
unless the State is materially compliant; and

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

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

“(3) STATE CERTIFICATIONS.—The Secretary
shall determine whether a State is meeting the re-
quirements of this section based on certifications
made by the State to the Secretary. Such certifi-
cations shall be made at such times and in such
manner as the Secretary, in consultation with the
Secretary of Transportation, may prescribe by regu-
lation.
“(4) Certification of other identification documents.—The Secretary may certify any
driver’s license or identification card, including an Enhanced Driver’s License designated by the Sec-
retary under section 7209 of the 9/11 Commission Implementation Act of 2004, as compliant with the
requirements of this subtitle if the Secretary, after review, determines such license or card meets the re-
quirements of this subtitle.

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

“(1) The person’s legal name.

“(2) The person’s date of birth.

“(3) The person’s gender.

“(4) The person’s driver’s license or identification card number.

“(5) A digital photograph of the person.

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

“(A) as provided for under section 827 of
the Violence Against Women Act (Public Law
109–162); or
“(B) for any individual who a State determines should be exempted from the requirement under this paragraph to protect the safety or security of the applicant.

“(7) The person’s signature.

“(8) A combination of security features designed to protect the physical integrity of the document, including the prevention of tampering, counterfeiting, or duplication of the document for fraudulent purposes.

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

“(10) A unique symbol designated by the Secretary to indicate compliance with the requirements under this section.

“(c) MINIMUM ISSUANCE STANDARDS.—

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

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

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

“(C) Proof of the person’s social security account number or verification that the person is not eligible for a social security account number.

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

“(2) SPECIAL REQUIREMENTS.—

“(A) In general.—To meet the requirements of this section, a State shall comply with the minimum standards of this paragraph.

“(B) Evidence of lawful status.—Before issuing a driver’s license or identification card to a person, a State shall verify that the person—

“(i) is a citizen or national of the United States;
“(ii) has been granted lawful permanent residence in the United States;

“(iii) has been granted asylum or withholding of removal, or has been admitted into the United States as a refugee;

“(iv) has been granted temporary residence in the United States;

“(v) has been paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)), subject to such exceptions as the Secretary, in the Secretary’s unreviewable discretion, may prescribe for aliens paroled into the United States for prosecution or other categories of paroled aliens;

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

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

“(viii) has been granted temporary protected status in the United States or has a pending application for temporary
protective status and has been granted employment authorization;

“(ix) has been granted deferred action status;

“(x) has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States;

“(xi) has otherwise been granted employment authorization in the United States; or

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

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

“(i) IN GENERAL.—If a person presents evidence under any of clauses (iv) through (xii) of subparagraph (B), the State may only issue a temporary driver’s license or temporary identification card to the person that is valid for a time period ending not later than the expiration date
of the applicant’s authorized stay in the United States or, if there is no such expiration date, for a period not to exceed 1 year. The Secretary may, in the Secretary’s unreviewable discretion, authorize the issuance of temporary driver’s licenses or temporary identification cards, for periods longer than 1 year, to employees of international organizations and to other nonimmigrant aliens who are authorized to remain in the United States for an indefinite period.

“(ii) Display of Expiration Date.—A temporary driver’s license or temporary identification card issued pursuant to this subparagraph shall clearly state the date on which it expires.

“(iii) Renewal.—A temporary driver’s license or temporary identification card issued pursuant to this subparagraph may be renewed only upon verification of the applicant’s current lawful status.

“(3) Validation of Documents.—To meet the requirements of this section, a State—
“(A) shall not accept any foreign document, other than an official passport, to satisfy a requirement of paragraph (1) or (2); and

“(B) not later than 1 year after the date on which final regulations are issued to implement this subtitle, pursuant to section 5 of the PASS ID Act, shall enter into a memorandum of understanding with the Secretary to routinely utilize the automated system known as Systematic Alien Verification for Entitlements established under section 121 of the Immigration Reform and Control Act of 1986 (Public Law 99–603), to verify the legal presence status of a person, other than a United States citizen or national, who is applying for a driver’s license or identification card.

“(d) OTHER REQUIREMENTS.—To meet the requirements of this section, a State shall adopt the following practices in the issuance of driver’s licenses and identification cards:

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

or

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

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

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

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

“(5) Establish an effective procedure to confirm
that a person submitting an application for a driv-
er’s license or identification card is terminating or
has terminated any driver’s license or identification
card issued pursuant to this section to such person
by a State.
“(6) Provide for the physical security of locations where driver’s licenses and identification cards are produced and the security of document materials and papers from which driver’s licenses and identification cards are produced.

“(7) Establish appropriate administrative and physical safeguards to protect the security, confidentiality, and integrity of personally identifiable information collected and maintained at locations at which driver’s licenses or identification documents are produced or stored, including—

“(A) procedures to prevent the unauthorized access to, or use of, personally identifiable information;

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

“(C) the establishment of a process through which individuals may access, amend, and correct, as determined appropriate by the State, their own personally identifiable information.
“(8) Subject all persons authorized to manufacture or produce driver’s licenses and identification cards to appropriate security clearance requirements.

“(9) Establish fraudulent document recognition and document validation training programs for appropriate employees engaged in the issuance of driver’s licenses and identification cards.

“(10) Limit the period of validity of all driver’s licenses and identification cards that are not temporary to a period that does not exceed 8 years.

“(e) EXCEPTIONS PROCESS.—

“(1) IN GENERAL.—States shall establish an exceptions process to reasonably accommodate persons who, for extraordinary reasons beyond their control, are unable to present the necessary documents listed in subsection (c)(1).

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

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

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

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

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

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

“(b) DEFINITIONS.—In this section:

“(1) AIRPORT.—The term ‘airport’ has the
meaning given such term under section 40102 of
title 49, United States Code.
“(2) FALSE.—The term ‘false’ has the meaning given such term under section 1028(d) of title 18, United States Code.

“SEC. 244. GRANTS TO STATES.

“(a) ESTABLISHMENT.—

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

“(2) DISTRIBUTION OF GRANTS.—The Secretary, through the Administrator of the Federal Emergency Management Agency, shall distribute grants awarded under this section to States that submit an application as follows:

“(A) PROPORTIONAL ALLOCATION.—Not less than ⅔ of the amounts appropriated for grants under this section shall be allocated to each State in the ratio that—

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

“(ii) the number of driver’s licenses and identifications cards issued by all

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States in the most recently ended calendar year.

“(B) REMAINING ALLOCATION.—The Secretary may allocate to States any amounts appropriated for grants under this section that are not allocated under subparagraph (A) in such manner as, in the Secretary’s discretion, will most effectively assist in achieving the goals of this subtitle.

“(C) MINIMUM ALLOCATION.—In allocating funds under this section, the Secretary shall ensure that for each fiscal year—

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

“(ii) American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands each receive not less than an amount equal to 0.08 percent of the total funds appropriated for grants under this section for that fiscal year.
“(b) Authorization of Appropriations.—There are authorized to be appropriated to the Secretary, for each of the fiscal years 2010 through 2015, such sums as may be necessary to carry out this section.

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

“(a) Establishment.—The Secretary, in consultation with the Secretary of Transportation, shall establish a State-to-State one driver, one license demonstration project.

“(b) Purpose.—The demonstration project established under this section shall include an evaluation of the feasibility of establishing an electronic system to verify that an applicant for a driver’s license or identification card issued in accordance with this subtitle does not retain a driver’s license or identification card issued in accordance with this subtitle by another State.

“(c) Requirements.—The demonstration project shall include a review of—

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

“(2) the security and privacy measures necessary to protect the integrity and physical security of driver’s licenses; and

“(3) the appropriate governance structure to ensure effective management of the electronic
records system, including preventing the unauthorized use of information in the system, and ensuring the security and confidentiality of personally identifiable information.

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

“(1) authorize the creation of a national database of driver’s license information; or

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

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

“SEC. 246. AUTHORITY.

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

“(b) EXTENSIONS OF DEADLINES.—The Secretary may grant to a State an extension of time to meet the requirements of section 242(a)(1) if the State provides adequate justification for noncompliance.
“SEC. 247. LIMITATION ON STATUTORY CONSTRUCTION.

“Nothing in this subtitle may be construed to—

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

“(2) preempt State privacy laws that are more protective of personal privacy than the requirements of this subtitle or the standards or regulations promulgated to implement this subtitle, provided that such State laws are consistent with this subtitle and the regulations prescribed pursuant to this subtitle.”.

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

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

“Sec. 241. Definitions.
“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.”.

SEC. 4. USE OF DRIVER’S LICENSE OR IDENTIFICATION CARD DATA BY PRIVATE ENTITIES.

Chapter 123 of title 18, United States Code is amended—
(1) in section 2722, by adding at the end the following:

“(c) Copying Information From Drivers Licenses or Identification Cards.—It shall be unlawful for any person, knowingly and without lawful authority—

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

“(2)(A) to resell, share or trade that information with any other third parties;

“(B) track the use of a driver’s license or identification card; or

“(C) store the information collected.”;

(2) in section 2724(a), by inserting “driver’s license, or identification card,” after “motor vehicle record,”;

(3) in section 2725—

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

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

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

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

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

“(1) ‘driver’s license’ means a motor vehicle operator’s license, as defined in section 30301 of title 49, United States Code;”;

(G) by inserting after paragraph (3), as redesignated, the following:

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

SEC. 5. RULEMAKING.

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

(b) CONTENT.—The regulations issued pursuant to subsection (a)—
(1) shall include procedures and requirements that—

(A) protect the privacy rights of individuals who apply for and hold a driver’s license or personal identification card;

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

(2) shall include procedures to protect any personally identifiable information electronically transmitted;

(3) shall establish a process through which individuals may access, amend, and correct, as determined appropriate by the Secretary, their own personally identifiable information in any Federal databases used in complying with this Act;

(4) may not require a single design or numbering system to which driver’s licenses or personal identification cards issued by all States shall conform; and

(5) shall only apply to driver’s licenses or identification cards issued pursuant to subtitle E of title II of the Homeland Security Act of 2002, as added by section 3.
SEC. 6. SAVINGS PROVISION.

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

(b) EFFECT OF COMPLETED ADMINISTRATIVE ACTIONS.—Completed personnel actions, agreements, grants, and contracts undertaken by an agency—

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

(2) shall continue in effect according to their terms until amended, modified, superseded, terminated, set aside, or revoked by an officer of the United States, by a court of competent jurisdiction, or by operation of law.