

110TH CONGRESS  
1ST SESSION

# S. 717

To repeal title II of the REAL ID Act of 2005, to restore 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 SENATE OF THE UNITED STATES

FEBRUARY 28, 2007

Mr. AKAKA (for himself, Mr. SUNUNU, Mr. LEAHY, and Mr. TESTER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To repeal title II of the REAL ID Act of 2005, to restore 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Identification Security  
3 Enhancement Act of 2007”.

4 **SEC. 2. REPEAL.**

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6 Public Law 109–13; 49 U.S.C. 30301 note) is repealed.

7 **SEC. 3. DRIVER’S LICENSES AND PERSONAL IDENTIFICA-**  
8 **TION CARDS.**

9 (a) **DEFINITIONS.**—In this section:

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

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

18 (b) **STANDARDS FOR ACCEPTANCE BY FEDERAL**  
19 **AGENCIES.**—

20 (1) **IN GENERAL.**—

21 (A) **LIMITATION ON ACCEPTANCE.**—No  
22 Federal agency may accept, for any official pur-  
23 pose, a driver’s license or personal identification  
24 card newly issued by a State more than 2 years  
25 after the promulgation of the minimum stand-  
26 ards under paragraph (2) unless the driver’s li-

1 cense or personal identification card conforms  
2 to such minimum standards.

3 (B) DATE FOR FULL CONFORMANCE.—

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

14 (ii) ALTERNATIVE DATE FOR FULL  
15 CONFORMANCE.—If the Secretary deter-  
16 mines that it is impracticable for States to  
17 replace all State-issued driver's licenses  
18 and personal identification cards before the  
19 deadline set forth in clause (i), the Sec-  
20 retary, in consultation with the Secretary  
21 of Transportation, may set a later, alter-  
22 native deadline to the extent necessary for  
23 States to complete such replacement with  
24 reasonable efforts.

25 (C) STATE CERTIFICATION.—

1 (i) IN GENERAL.—Each State shall  
2 certify to the Secretary that the State is in  
3 compliance with the requirements of this  
4 section.

5 (ii) FREQUENCY.—Certifications  
6 under clause (i) shall be made at such in-  
7 tervals and in such a manner as the Sec-  
8 retary, with the concurrence of the Sec-  
9 retary of Transportation, may prescribe by  
10 regulation.

11 (iii) AUDITS.—The Secretary may  
12 conduct periodic audits of each State's  
13 compliance with the requirements of this  
14 section.

15 (2) MINIMUM STANDARDS.—Not later than 12  
16 months after the date of the enactment of this Act,  
17 the Secretary, in consultation with the Secretary of  
18 Transportation, shall by regulation, establish by  
19 minimum standards for driver's licenses or personal  
20 identification cards issued by a State for use by  
21 Federal agencies for identification purposes that  
22 shall include—

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

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

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

7 (D) standards for information to be in-  
8 cluded on each driver's license or personal iden-  
9 tification card, including—

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

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

12 (iii) the person's gender;

13 (iv) the person's driver's license or  
14 personal identification card number;

15 (v) a photograph of the person;

16 (vi) the person's address of principal  
17 residence; and

18 (vii) the person's signature;

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

23 (F) security standards to ensure that driv-  
24 er's licenses and personal identification cards  
25 are—

1 (i) resistant to tampering, alteration,  
2 or counterfeiting; and

3 (ii) capable of accommodating and en-  
4 suring the security of a photograph or  
5 other unique identifier; and

6 (G) a requirement that a State confiscate  
7 a driver's license or personal identification card  
8 if any component or security feature of the li-  
9 cense or identification card is compromised.

10 (c) NEGOTIATED RULEMAKING.—

11 (1) IN GENERAL.—Before publishing the pro-  
12 posed regulations required by subsection (b)(2) to  
13 carry out this title, the Secretary shall establish a  
14 negotiated rulemaking process pursuant to sub-  
15 chapter IV of chapter 5 of title 5, United States  
16 Code (5 U.S.C. 561 et seq.).

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

20 (A) any recommendation for a proposed  
21 rule or report—

22 (i) is provided to the Secretary not  
23 later than 9 months after the date of the  
24 enactment of this Act; and

1 (ii) includes an assessment of the ben-  
 2 efits and costs of the recommendation; and  
 3 (B) a final rule is promulgated not later  
 4 than 12 months after the date of the enactment  
 5 of this Act.

6 (3) REPRESENTATION ON NEGOTIATED RULE-  
 7 MAKING COMMITTEE.—Any negotiated rulemaking  
 8 committee established by the Secretary pursuant to  
 9 paragraph (1) shall include equal numbers of rep-  
 10 resentatives from—

11 (A) among State offices that issue driver’s  
 12 licenses or personal identification cards;

13 (B) among State elected officials;

14 (C) the Department of Transportation;  
 15 and

16 (D) among interested parties, including ex-  
 17 perts in privacy protection, experts in civil lib-  
 18 erties and protection of constitutional rights,  
 19 and experts in immigration law.

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

22 (A) shall facilitate communication between  
 23 the chief driver licensing official of a State, an  
 24 appropriate official of a Federal agency and  
 25 other relevant officials, to verify the authen-

1           ticity of documents, as appropriate, issued by  
2           such Federal agency or entity and presented to  
3           prove the identity of an individual;

4           (B) may not infringe on a State's power to  
5           set criteria concerning what categories of indi-  
6           viduals are eligible to obtain a driver's license  
7           or personal identification card from that State;

8           (C) may not require a State to comply with  
9           any such regulation that conflicts with or other-  
10          wise interferes with the full enforcement of  
11          State criteria concerning the categories of indi-  
12          viduals that are eligible to obtain a driver's li-  
13          cense or personal identification card from that  
14          State;

15          (D) may not require a single design to  
16          which driver's licenses or personal identification  
17          cards issued by all States must conform; and

18          (E) shall include procedures and require-  
19          ments to protect the privacy rights of individ-  
20          uals who apply for and hold driver's licenses  
21          and personal identification cards.

22          (F) shall include procedures and require-  
23          ments to protect the federal and state constitu-  
24          tional rights and civil liberties of individuals

1 who apply for and hold driver's licenses and  
2 personal identification cards;

3 (G) shall not permit the transmission of  
4 any personally identifiable information except  
5 for in encrypted format;

6 (H) shall provide individuals with proce-  
7 dural and substantive due process, including  
8 promulgating rules and rights of appeal, to  
9 challenge errors in data records contained with-  
10 in the databases created to implement this Act;

11 (I) shall not permit private entities to scan  
12 the information contained on the face of a li-  
13 cense, or in the machine readable component of  
14 the license, and resell, share or trade that infor-  
15 mation with any other third parties, nor shall  
16 private entities be permitted to store the infor-  
17 mation collected for any other than fraud pre-  
18 vention purposes;

19 (J) shall not preempt state privacy laws  
20 that are more protective of personal privacy  
21 than the standards, or regulations promulgated  
22 to implement this Act; and

23 (K) shall neither permit nor require  
24 verification of birth certificates until a nation-

1 wide system is designed to facilitate such  
2 verification.

3 (d) GRANTS TO STATES.—

4 (1) ASSISTANCE IN MEETING FEDERAL STAND-  
5 ARDS.—Beginning on the date a final regulation is  
6 promulgated under subsection (b)(2), the Secretary  
7 shall award grants to States to assist them in con-  
8 forming to the minimum standards for driver’s li-  
9 censes and personal identification cards set forth in  
10 the regulation.

11 (2) ALLOCATION OF GRANTS.—The Secretary  
12 shall award grants to States under this subsection  
13 based on the proportion that the estimated average  
14 annual number of driver’s licenses and personal  
15 identification cards issued by a State applying for a  
16 grant bears to the average annual number of such  
17 documents issued by all States.

18 (3) MINIMUM ALLOCATION.—Notwithstanding  
19 paragraph (2), each State shall receive not less than  
20 0.5 percent of the grant funds made available under  
21 this subsection.

22 (4) SEPARATE FUNDING.—Funds appropriated  
23 for grants under this section may not be commingled  
24 with other grant funds administered by the Depart-

1        ment and may not be used for any purpose other  
2        than the purpose set forth in paragraph (1).

3        (e) **EXTENSION OF EFFECTIVE DATE.**—The Sec-  
4        retary may extend the date specified under subsection  
5        (b)(1)(A) for not more than 2 years for driver’s licenses  
6        issued by a State if the Secretary determines that the  
7        State made reasonable efforts to comply with the date  
8        under such subsection but was unable to do so.

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

10       There are authorized to be appropriated to the Sec-  
11       retary \$300,000,000 for each of the fiscal years 2007  
12       through 2013 to carry out this Act.

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