

109TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

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

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Mr. AKAKA introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To repeal title II of the REAL ID Act of 2005, to reinstitute the 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 2006”.

4 **SEC. 2. REPEAL.**

5 Title II of the REAL ID Act of 2005 (Division B  
6 of Public Law 109–13; 49 U.S.C. 30301 note) is repealed.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 of  
16                           Homeland Security determines that it is  
17                           impracticable for States to replace all  
18                           State-issued driver’s licenses and personal  
19                           identification cards before the deadline set  
20                           forth in clause (i), the Secretary of Home-  
21                           land Security, in consultation with the Sec-  
22                           retary of Transportation, may set a later,  
23                           alternative deadline to the extent necessary  
24                           for States to complete such replacement  
25                           with reasonable efforts.

1 (C) STATE CERTIFICATION.—

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

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

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

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

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

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

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

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

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

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

15 (iii) the person's gender;

16 (iv) the person's driver's license or  
17 personal identification card number;

18 (v) a photograph of the person;

19 (vi) the person's address of principal  
20 residence; and

21 (vii) the person's signature;

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

1 (F) security standards to ensure that driv-  
2 er's licenses and personal identification cards  
3 are—

4 (i) resistant to tampering, alteration,  
5 or counterfeiting; and

6 (ii) capable of accommodating and en-  
7 suring the security of a photograph or  
8 other unique identifier; and

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

13 (c) NEGOTIATED RULEMAKING.—

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

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

23 (A) any recommendation for a proposed  
24 rule or report—

1 (i) is provided to the Secretary of  
2 Homeland Security not later than 9  
3 months after the date of enactment of this  
4 Act; and

5 (ii) includes an assessment of the ben-  
6 efits and costs of the recommendation; and

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

10 (3) REPRESENTATION ON NEGOTIATED RULE-  
11 MAKING COMMITTEE.—Any negotiated rulemaking  
12 committee established by the Secretary of Homeland  
13 Security pursuant to paragraph (1) shall include  
14 equal numbers of representatives from—

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

17 (B) among State elected officials;

18 (C) the Department of Transportation;

19 and

20 (D) among interested parties, including ex-  
21 perts in privacy protection, experts in civil lib-  
22 erties and protection of constitutional rights,  
23 and experts in immigration law.

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

1 (A) shall facilitate communication between  
2 the chief driver licensing official of a State, an  
3 appropriate official of a Federal agency and  
4 other relevant officials, to verify the authen-  
5 ticity of documents, as appropriate, issued by  
6 such Federal agency or entity and presented to  
7 prove the identity of an individual;

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

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

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

22 (E) shall include procedures and require-  
23 ments to protect the privacy rights of individ-  
24 uals who apply for and hold driver's licenses  
25 and personal identification cards.



1 (F) shall include procedures and require-  
2 ments to protect the federal and state constitu-  
3 tional rights and civil liberties of individuals  
4 who apply for and hold driver's licenses and  
5 personal identification cards;

6 (G) shall not permit the transmission of  
7 any personally identifiable information except  
8 for in encrypted format;

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

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

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

1           (K) shall neither permit nor require  
2           verification of birth certificates until a nation  
3           wide system is designed to facilitate such  
4           verification.

5           (d) GRANTS TO STATES.—

6           (1) ASSISTANCE IN MEETING FEDERAL STAND-  
7           ARDS.—Beginning on the date a final regulation is  
8           promulgated under subsection (b)(2), the Secretary  
9           of Homeland Security shall award grants to States  
10          to assist them in conforming to the minimum stand-  
11          ards for driver’s licenses and personal identification  
12          cards set forth in the regulation.

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

20          (3) MINIMUM ALLOCATION.—Notwithstanding  
21          paragraph (2), each State shall receive not less than  
22          0.5 percent of the grant funds made available under  
23          this subsection.

24          (4) SEPARATE FUNDING.—Funds appropriated  
25          for grants under this section may not be commingled

1 with other grant funds administered by the Depart-  
2 ment of Homeland Security and may not be used for  
3 any purpose other than the purpose set forth in  
4 paragraph (1).

5 (e) EXTENSION OF EFFECTIVE DATE.—The Sec-  
6 retary of Homeland Security may extend the date specified  
7 under subsection (b)(1)(A) for up to 2 years for driver’s  
8 licenses issued by a State if the Secretary determines that  
9 the State made reasonable efforts to comply with the date  
10 under such subsection but was unable to do so.

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

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