

Senator Daniel K. Akaka
Statement on the REAL ID Act
December 8, 2006

Mr. AKAKA. Mr. President, I rise today to discuss the REAL ID Act of 2005.

The REAL ID Act became law over a year and a half ago, but opposition remains strong and vocal. I hold in my hand a list of hundreds of organizations – ranging from the National Governor’s Association (NGA) to the American Civil Liberties Union (ACLU) to the National Rifle Association – that believe the REAL ID Act was a grave mistake. None of these groups were heard by Congress before the bill was passed in May 2005. There were no hearings to understand the repercussions of such sweeping legislation; and no debate on the floor of the U.S. Senate.

Rather, the REAL ID Act was attached to a must-pass piece of legislation, the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief Act (P.L. 109-13), in Conference and therefore received virtually no scrutiny before passage. Every member of Congress who supported providing much needed funding to our troops and relief to the Indonesia tsunami victims was forced to vote in favor of the REAL ID Act, an unrelated bill.

That is why I come to the floor today to spark a real debate on REAL ID. I say to my colleagues there are serious problems with REAL ID and it's time Congress took a closer look.

My two primary concerns with REAL ID are that the law:

- places an unrealistic and unfunded burden on state governments;
- and
- erodes Americans' civil liberties and privacy rights.

Mr. President, there is nothing realistic about REAL ID. This law mandates that state-issued IDs, such as driver's licenses, comply with certain security standards and procedures, as determined by the Department of Homeland Security (DHS), in order to be accepted by the federal government for such purposes as boarding an airplane or entering a federal building. These procedures include electronically verifying the authenticity of each identifying document, such as birth certificates, passports, and social security cards, presented to a local Department of Motor Vehicles (DMV) office. Such a requirement likely will involve developing an extremely costly and complex set of electronic systems that connect the thousands of DMVs to one another and to a host of federal agencies. This would cost \$1.42 billion according to a September 2006

report issued by the NGA, the National Conference of State Legislatures (NCSL), and the American Association of Motor Vehicle Administrators (AAMVA).

In addition, every current driver's license holder must be re-enrolled under the new screening process which will more than double the workload at local DMVs across the country and far exceed their current capacity. REAL ID will put an end, at least temporarily, to online and mail license renewals and will cause huge lines and back-up at the DMV. Although security should never be sacrificed for convenience, it's important that states have the time and flexibility to implement the additional security standards in an effective manner. Moreover, re-enrollment will be the mostly costly piece of REAL ID, estimated at approximately \$8 billion over five years by NGA, NCSL, and AAMVA.

There are a number of other requirements imposed on states by REAL ID, such as new design requirements for the ID cards and on-site security. In total, REAL ID will cost over \$11 billion according to the NGA study. Congress has appropriated only \$40 million for REAL ID implementation to date, and no funds were included for FY 07. That leaves a hefty price tag for the states, especially for legislation that was passed

with no review.

In addition to the cost imposed on states, REAL ID imposes an unrealistic timeframe. Under the law, states must have REAL ID compliant systems in place by May 2008. Yet implementing regulations have not been issued. DHS is expected to issue the regulations early next year. However, as of today, the Office of Management and Budget (OMB) has not received the draft regulations, and OMB is allowed 90 days by Executive Order for review of all proposed regulations. That would give states a little over a year to develop electronic verification systems, redesign driver's license cards, establish protocols on how to handle and secure personal information, increase DMV personnel, and find a way to fund it all. It's taken DHS over a year and a half just to issue the regulations. Expecting the states to execute the new system in even less time is unrealistic.

In addition to the unrealistic burden REAL ID places on states, REAL ID is a serious threat to our privacy rights and civil liberties.

The REAL ID Act will require each state's driver's licensing agency to collect and store substantial numbers of records containing licensees' most sensitive personally identifiable information, including one's social security

number, proof of residence, and biometric identifiers such as a digital photograph and signature. If the new state databases are compromised, they will provide one-stop access to virtually all information necessary to commit identity theft. Moreover, the sharing of the aggregated personally identifiable information of licensees between and amongst various government agencies and employees at the federal, state, and local level, as contemplated by the REAL ID Act, potentially allows millions of individuals access to that information without protections or safeguards. The potential for the private sector to scan and share the information contained on a REAL ID compliant license exponentially increases the risk of identity theft as well. Despite these obvious threats to Americans' privacy, the REAL ID Act fails to mandate privacy protections for individuals' information nor does it provide states with the means to implement data security and anti-hacking protections that will be required to safeguard the new databases mandated by the Act.

REAL ID exacerbates the threat of identity theft which threatens our security. As the Honolulu Star Bulletin noted in a October 1, 2006 editorial, the REAL ID Act gives us "a false sense of security."

Mr. President, I come to the floor today to inject some reality into

REAL ID. Unfunded mandates, privacy, and security are real problems that deserve real consideration and real solutions. It is my hope that when DHS issues the REAL ID regulations, the following issues are addressed:

- 1) Limiting access to the REAL ID networks;
- 2) Securing data that is electronically stored on driver's licenses and ID cards;
- 3) Allowing flexibility in the technological solutions employed by the states;
- 4) Defining the role federal agencies will play in developing and connecting with the electronic verification systems;
- 5) Ensuring that individuals' privacy rights provided by the federal government and state governments are protected;
- 6) Providing a means to correct inaccurate information held in the REAL ID networks; and
- 7) Ensuring that the information contained in the license cannot be scanned or shared by private entities.

I hope that the regulations will be well thought out and reflect the stakeholder input provided to DHS over the past year and a half which included the issues I just raised.

However, given what I have heard from participants about the rule-making process thus far, I am concerned that the regulations are being developed by too few people without enough stakeholder engagement.

When DHS began this process, the State Working Group was developed to gather input from stakeholders. However, the engagement process was not as robust as it could have been. Participants in the working group never received feedback from DHS on their proposals and DHS never reconvened the group to evaluate a draft of the regulations.

I also am concerned that given the shortsightedness of the law DHS was given by Congress, it may be the case that a complete replacement of the REAL ID Act is necessary. I am looking to DHS to issue workable regulations. However, if our personal privacy is not protected and the burden placed on states is too great, a legislative change to REAL ID may prove necessary.

Congress established a negotiated rulemaking process to improve the security of drivers licenses and ID cards in the Intelligence Reform and Terrorism Prevention Act of 2004. According to participants, that process was making headway when the REAL ID Act passed repealing the negotiated rulemaking language and imposing much stricter guidelines.

Today Senator Sununu and I introduce the Identification Security Enhancement Act, which will repeal the REAL ID Act and reinstitute the shared rulemaking and more reasonable guidelines established in the Intelligence Reform Act. It is my intention to review the forthcoming DHS regulations before pursuing any action on our bill. I am hopeful that new legislation will not be necessary, and I look forward to working with DHS to produce workable guidelines. However, I believe that introducing the Identification Security Enhancement Act now is important because it will send a message that the intent of the entirety of Congress is not reflected in the REAL ID Act.

Congress has a responsibility to ensure that driver's licenses and ID cards issued in the United States are secure – both from would-be terrorists and identity thieves – affordable, and practical. I ask my colleagues to join us in injecting reality into the REAL ID Act.

I ask unanimous consent that the text of the bill be printed in the RECORD following my statement. Thank you, Mr. President.