

Statement of Senator Daniel K. Akaka
“Understanding the Realities of REAL ID:
A Review of Efforts to Secure Drivers Licenses and Identification Cards”
Committee on Homeland Security and Governmental Affairs
Subcommittee on Oversight of Government Management,
the Federal Workforce, and the District of Columbia
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Before we begin, I want to extend a warm welcome to all of our witnesses today, and especially to Honolulu Mayor Mufi Hannemann, who is accompanied by Mr. Dennis Kamimura, the Licensing Administrator for the City and County of Honolulu. I greatly appreciate your coming from Hawaii, and I look forward to discussing how REAL ID impacts our state.

Today’s hearing -- Understanding the Realities of REAL ID: A Review of Efforts to Secure Drivers Licenses and Identification Cards -- will review the REAL ID Act of 2005 and the proposed regulations implementing the Act recently issued by the Department of Homeland Security (DHS).

In 2004, the 9-11 Commission reported that all but one of the 9-11 hijackers acquired some form of U.S. identification, some by fraudulent means, which assisted them in boarding commercial flights, renting cars, and other activities. As a result, the Commission recommended the federal government set standards for issuing sources of identification, such as drivers licenses.

In December 2004, Congress passed the Intelligence Reform and Terrorism Prevention Act to establish a negotiated rulemaking process among the federal government, state and local governments, privacy groups, and other stakeholders to develop standards for drivers licenses and identification cards. However, the Act provided states with flexibility for complying with the federal requirements and ensured privacy protections.

Without the benefit of congressional hearings and before the negotiated rulemaking committee held its second meeting, the REAL ID Act was included in the 2005 Emergency Supplemental Conference Report, thus replacing the collective effort to address the 9-11 Commission’s recommendation.

From its inception, REAL ID has been controversial and criticized by both ends of the political spectrum. The Act places a significant unfunded mandate on states and poses a real threat to privacy and civil liberties.

In issuing the REAL ID regulations, DHS has acknowledged the implementation problems and the need to address the burdens placed on the states. Secretary Chertoff announced that states could easily apply for a waiver from the compliance deadline and could use up to 20 percent of the State’s Homeland Security Grant Program (SHSGP) funds to pay for REAL ID implementation. To me this proposal does nothing to address the cost of REAL ID, which DHS estimates to be anywhere from \$17.2 billion to \$ 23.1 billion.

Moreover, the President's FY08 budget proposes to cut SHSGP by 52 percent. On top of this, states have already designated SHSGP funds for particular homeland security projects, such as interoperability equipment, physical security structures, training, and evacuation planning.

My other concern is the serious threat by REAL ID to the privacy of Americans' personal information. The massive amounts of personal information that would be stored in state databases to be shared electronically with all other states, as well as the unencrypted data on the card, could provide one-stop shopping for identity thieves. In addition, the DHS regulations fail to address redress mechanisms for individuals whose data is lost or stolen in another state or guidance on how states are to secure source documents. As a result, REAL ID could make us less secure.

Unfunded mandates and the lack of privacy and security requirements are real problems that deserve serious consideration and workable solutions.

Congress has a responsibility to ensure that driver's licenses and ID cards issued in the United States are affordable, practical, and secure — both from would-be terrorists and identity thieves. Over half of our nation's state legislatures — 28 — have acted to introduce or to pass legislation expressing concern or calling for repeal of REAL ID. Two states, Maine and Idaho, have passed legislation to opt out of complying with REAL ID. In Hawaii, a resolution passed the state Senate which calls for repeal of those provisions of REAL ID that violate the rights and liberties guaranteed under the Hawaii State Constitution and the Constitution of the United States; and create unfunded mandates for the state without any plan for financial subsidization for implementation.

To address these concerns, I reintroduced the Identity Security Enhancement Act (S. 717) with Senators Sununu, Leahy, and Tester, to repeal REAL ID and replace it with the negotiated rulemaking process and the more reasonable guidelines established in the Intelligence Reform and Terrorism Prevention Act of 2004.

It is in the interest of all Americans that this hearing shed light on the problems with REAL ID and provide a forum to discuss solutions that both protect the Nation and Americans' privacy and civil liberties.