

Licensed by the states

*Keeping driver's licenses
in the hands of the states*

BY ALBERT HARBERSON

States have moved rapidly to address security issues highlighted by the terrorist attacks of Sept. 11, 2001, particularly those related to driver's license

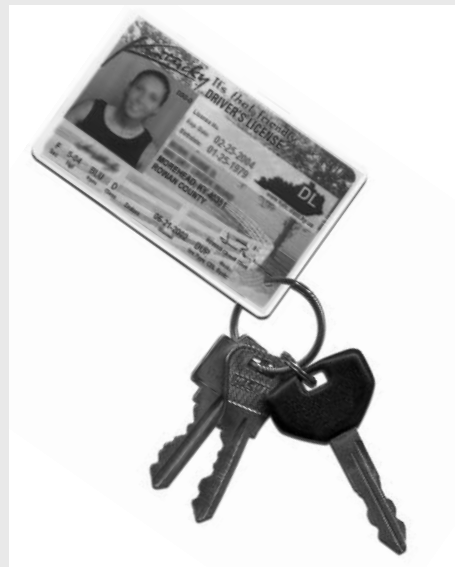


issuance, administration, enforcement and verifiability. Although not essential or directly related to the atrocities committed on 9/11, the discovery that many of the terrorists held driver's licenses – some fraudulently issued and some due to lax issuance standards – has focused state leaders' attention on opportunities to improve driver's license integrity for a host of important public safety reasons.

In 2000 alone, drivers with invalid licenses killed more than 6,200 people. The total economic impact of those invalid drivers in that year is estimated to have exceeded \$25 billion, according to the National Highway Traffic Safety Administration (NHTSA). Enhancing issuance standards, driver's license doc-

ument authenticity and driver information verifiability would significantly improve the driver's license for its only required use – to prove state sanction to operate a motor vehicle – and for its associated permissive uses relating to identity verification. States are increasingly aware of incidents of fraud and neglect that pervade many driver's license issuing authorities, an issue at the heart of comprehensive driver's license program reform.

Federal legislation to preempt states' control of their driver's license programs is currently being considered by Congress. States are addressing this issue by updating and modifying their



current driver's license regulations and federal legislation in this area would be subject to significant legal challenges over jurisdiction and would likely result in an unfunded mandate for states.

States administer driver's licenses

Driver's licenses are issued by states under the constitutional authority of the Tenth Amendment, which reads, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." Individual states have adopted driving standards appropriate to their own resi-



The driver's license has only one required purpose – to prove state sanction to operate a motor vehicle.

dents and have vested the authority to issue driver's licenses in a variety of state agencies. A majority of states leave it to their respective Departments of Motor Vehicles or Departments of Transportation; in some states this authority is under the jurisdiction of the Secretary of State or even the State Tax Commission.

Rhode Island passed the first driver's license law in 1908. Since then, every state and territory has established statutory provisions and administrative regulations to govern the privilege of driving. Driver's licenses were created for the purpose of protecting public safety by recognizing those individuals who met the necessary standards to receive state sanction to operate a motor vehicle. Generally, those standards include age, knowledge of traffic laws, physical capability to drive and practical driving competence. All states have required drivers to be licensed since 1954. Today, although driver's licenses are also used for many permissive purposes tied to verifying identity, the principal purpose of a driver's license remains unchanged — to prove state sanction to drive. Except for the commercial driver's license (CDL), states retain control of the standards governing driver's license issuance and enforcement.

Two interstate compacts currently govern states' administration of drivers. The Driver's License Compact (DLC) and the Nonresident Violator Compact (NRVC) facilitate states' cooperation and information sharing. These compacts were developed by the states and are currently administered by the American Association of Motor Vehicle



White House endorses state-led driver's license initiative

The White House endorsed The Council of State Government's (CSG) organizational position regarding a state-led driver's license initiative by including it in President George W. Bush's National Strategy for Homeland Security.

Released by President Bush on July 16, 2002, the security initiative directs the federal government to support state-led efforts to improve the integrity of state issued driver's licenses. The national policy includes the following directive:

“Coordinate suggested minimum standards for state driver's licenses. The licensing of drivers by the 50 states, the District of Columbia, and the United States territories varies widely. There are no national or agreed upon state standards for content, format or license acquisition procedures. Terrorist organizations, including Al-Qaeda operatives involved in

the September 11 attacks, have exploited these differences. While the issuance of driver's licenses falls squarely within the powers of the states, the federal government can assist the states in crafting solutions to curtail the future abuse of driver's licenses by terrorist organizations. Therefore, the federal government, in consultation with state government agencies and non-governmental organizations, should support state-led efforts to develop suggested minimum standards for driver's licenses, recognizing that many states should and will exceed these standards.”

A 50-state survey conducted by CSG in June and July 2002 shows that state leaders endorse this position. More than 95 percent of officials in 47 responding states and the District of Columbia favored state-directed efforts to address driver's license integrity, rather than creating a "federalized" driver's license.

Administrators (AAMVA).

The DLC, created in 1961 and adopted by 45 states, ensures that a driver's home state receives and processes information about traffic violations committed by that driver in another state. The NRVC, adopted by 44 states since its development in 1972, standardizes methods used by different jurisdictions to process traffic citations received by out-of-state residents.

In 1986, under its authority to regulate interstate commerce, the federal government enacted the “Commercial Motor Vehicle Safety Act” (CMVSA). This act established national standards for the issuance of the CDL. Commercial drivers have been required to obtain a CDL since 1992. According

to the U.S. Department of Transportation (USDOT), CDLs represent approximately 5 percent of the total number of 190 million driver's licenses in the United States.

Current issues

A more effective structure for states to comprehensively enforce driving laws would significantly enhance public safety. Such enhancements would, by necessity, include the following elements: Integrity of license issuance (ensuring that the person receiving a license meets necessary driving competency standards and has a verifiable identity) and verifiability (providing access for appropriate law enforcement

officials to verify the authenticity of the license document, driving history and identity of the license holder).

Integrity of license issuance: All states attempt to verify the identity of a potential license holder by using documents known as foundation documents. Foundation documents include but are not limited to birth certificates, utility bills, passports and other states' driver's licenses. The principal challenge related to foundation documents is the states' ability to verify authenticity and validity.

A related issue is the process by which a state verifies that the individual presenting valid foundation documents is indeed the individual to whom those documents belong. Under many existing systems it is possible for Jane to present Sally's birth certificate and get a valid driver's license in Sally's name.

Fraud presents a challenge. Under the current systems, individuals who produce fraudulent foundation documents have a good chance of illegally procuring a valid license or licenses. Such documents allow the perpetrator to assume the identity of another individual in order to commit a host of criminal offenses or to avoid responsibility for previously committed acts.

The most comprehensive system, however, is only as strong as its weakest link, and many times the weak link has proven to be licensing authority employees. For example, on October 1, 2000,

The Orange County Register reported that California Department of Motor Vehicle (DMV) employees were selling fraudulent driver's licenses for up to \$4000 each and that 60 active cases of fraud existed. In New Jersey, rings of DMV employees selling licenses were uncovered by law enforcement during a two-year investigation that is still underway, according to *The Star-Ledger*.

Verifiability: Although systems exist to access driver information from another state, they do not allow information retrieval in real time. The result is a practical inability to verify license information and driver history in a timely fashion. It is possible that an individual stopped for a traffic offense could produce a counterfeit license and escape detection because of that time lag. This is a significant public safety issue, since according to the NHTSA, individuals with invalid driver's licenses caused approximately 11 percent of fatal accidents in 2000. The cost in human life, injuries, property damage and increased insurance premiums is enormous.

Most states require a picture and some form of physical description to appear on license documents. A developing issue, however, concerns whether or not states should incorporate additional types of uniquely individual personal identifiers (e.g. fingerprints, retinal scans, etc.) into the licensing process to attempt to strengthen the connection between the license holder and



the document and to decrease fraudulent issuance and use.

The "Federalized" driver's license

Three pieces of federal legislation that would "federalize" the driver's license are currently under review by Congress.

Driver's License Modernization Act of 2002 (DLMA): This act, introduced by Rep. Jim Moran and Rep. Tom Davis of Virginia, requires that within five years states will implement driver's license programs with the following requirements:

- Driver's licenses will become "smart cards" with computer chips that store a variety of information.
- Biometric data to match the license with its owner will be collected.
- States' participation in national databases will be required.
- Tamper-resistant security features will be incorporated into all license documents.
- States will adopt and implement procedures for accurately documenting the identity and residence of an individual before issuing a driver's license.

This legislation directs the Secretary of Transportation to establish necessary standards within six months of its adoption in consultation with the American Association of Motor Vehicle Administrators (AAMVA), the General Services Administration, and the National Institute of Standards and Technology. The bill also authorizes the federal government to appropriate \$315 million for grants to states to help



offset initial costs of this new system. The specific language of the bill should be of interest to state leaders, however. It repeatedly directs the Secretary of Transportation to set standards but doesn't require federal funding to pay for new federally imposed requirements.

Driver's License Integrity Act of 2002 (DLIA): Similar to the DLMA, this legislation drafted by Sen. Richard Durbin of Illinois would require:

- Minimum uniform standards for issuance and administration of state-issued driver's licenses.
- Interstate sharing of driving information for verification with enhanced privacy protection within five years of enactment.
- Enhanced ability for verification and authentication of the driver's license.
- Prevention of abuse and enhanced penalties for internal fraud.
- Similar state funding allocation.

DLIA requires the Secretary of Transportation to develop the minimum set of verification and identification requirements and supervise state implementation.

HR 4043: This legislation, introduced by Rep. Jeff Flake of Arizona, would bar Federal agencies from accepting a state-issued driver's license for any identification-related purpose unless the state requires licenses issued to nonimmigrant aliens to expire upon the expiration of the aliens' nonimmigrant visa.

Arguments for federalization – and their flaws

Supporters of a national identification system often make two arguments for driver's license system reform: the oversight of foreign nationals and curbing identify theft. It's important to understand these arguments in order to fully appreciate the implications of driver's license system reform currently before Congress – legislation that would "federalize" the driver's license.

Foreign nationals: The federal government has the responsibility for admitting, regulating and monitoring foreign nationals in the country. It fol-

lows that the federal government must take actions that would prevent terrorists from entering the country in the first place. As for foreign nationals the government chooses to admit, information about these individuals should be made available to states in real time so visas and other documents can be verified.

One option would be for the federal government to consider certifying certain foreign nationals as being eligible to receive a driver's license, giving the states a clear sign that those foreign nationals have been thoroughly investigated. States may wish to re-evaluate whether issuing licenses to "non-status" immigrants is appropriate, despite public safety arguments for doing so. (At least four states currently issue licenses to non-status immigrants on the basis that public safety is better protected when individuals who are likely to drive are required to meet minimum competency standards).

Should the federal government attempt to shift responsibility for monitoring foreign nationals to the states, however, the costs and liability issues for the states would be enormous.

Identity theft: The problem of "identity theft" in the United States is significant, and is often used as a principal argument for federalizing driver's licenses. The argument cites evidence that there are more than 500,000 cases of identity theft a year, and since the driver's license is the most widely used form of personal identification, improving the current driver's license system and creating a better driver's license document can eliminate identity theft.

A close examination of this argument reveals its flaws, however. The Federal Trade Commission's (FTC) own statistics show that the majority of "identify theft" is actually credit fraud and bears little relation to the issuance of a driver's license

Evidence exists that the "more than 500,000" figure could be overstated by as much as 500 percent. The number comes from self-reporting by the three major credit-reporting agencies (Equifax, Experian and TransUnion) to the General Accounting Office (GAO).

Because these agencies became concerned that individuals were placing "fraud alerts" on their accounts as a preventive measure, whether or not they had actually been victims of credit fraud, the agencies changed their fraud alert procedures. Now, fraud alerts come in two forms. That procedural change has reduced the estimated number of "identity theft" cases from over 500,000 to approximately 100,000 cases per year.

Data from the FTC suggests that the number of cases of identity theft per year in which a falsified driver's license is implicated is actually about 2,700.

Those who advocate the use of the driver's license to stop the vaguely related problem of "identity theft" in its various forms admit that they want to expand the required use of a driver's licenses to non-driving purposes (e.g. the verification of identity for a host of other activities – banking, health care, etc.). This would require tying public and private databases together and, perhaps more importantly, such a system could certainly not be characterized as anything less than a "national identification system," with significant opportunities for misuse of information, violations of privacy and license-holder "tracking." Additionally, approximately 33 percent of American citizens, residents and visitors don't have driver's licenses because they don't drive, according to the USDOT. It is quite possible that such proposals would ultimately lead to the requirement that everyone be "licensed" in some form by the government, whether they intend to drive or not. In other words, the driver's license would become an identity license.

The scope of the real solution

States should move to improve the integrity of issuance of driver's licenses and the verifiability of those licenses. Doing so will address important public safety concerns related directly to the primary purpose of a license – state sanction to operate a motor vehicle – and will improve the license document for a host of other permissive uses. The

scope of a real solution, then, must address the following elements:

- **Issuance standards:** States should consider adopting standards for issuing driver's licenses that include the use of verifiable (e.g. authentic and valid) foundation documents. Such standards will necessarily involve enhancement of the control and verifiability of foundation documents within states, among states and between states and the federal government.
- **Driver information - collection, sharing and exchange:** States should consider enhancing their ability to share information about drivers by consistently collecting and sharing driver information. This information should then be available to appropriate law enforcement officials in real time.
- **State operation and enforcement:** States should consider examining their own driver's license authorities and whether their respective lead law enforcement organizations should take enhanced roles in administering the driver's license programs. Fraud in offices that issue licenses is a significant issue and cannot be ignored. An enhanced law enforcement role in licensing administration could reduce fraud, ensure compliance with established standards and promote government efficiency by tying the issuance of licenses to the enforcement of them. Additionally, states should consider additional penalties for criminal activity related to the improper issuance or manufacture of driver's licenses.
- **Tamper and counterfeit-proof features:** States should consider making the driver's license document more tamper resistant and difficult to counterfeit.
- **Accurate and reliable personal identifiers:** States should consider enhancing the type of uniquely individual personal identifiers they use to tie a driver to a driver's license document. This information should be verifiable in real time by appropriate

law enforcement officials.

- **Verifiability:** States should consider enhancing their communications and information infrastructures to allow real time access to driving history information and authenticity verification of the driver's license document.

State-driven solutions

States have an opportunity to drastically increase public safety and reduce the associated costs of unsafe drivers by addressing current driver's license issues. State approaches to the problem can include:

- **Establishing a "State Clearinghouse for Best Practices"** to promote effective regulatory and legislative changes in states, mirroring the ongoing efforts of The Council of State Governments (CSG), The National Conference of State Legislatures (NCSL) and The National Governors Association (NGA) on a wide array of issues. Information could be posted electronically and made available through annual or semi-annual written reports. The clearinghouse would document legislative enactments, regulatory changes, executive orders, interim committee reports and judicial decisions and provide links to related articles, publications and reports. Additionally, clearinghouse staff could provide necessary technical support to states.
- **Drafting model legislation** related to the issuance and verification processes. Model legislation could be collaboratively drafted by CSG, NCSL and NGA or by an organization experienced with the production of model legislation. Model legislation would identify issues that have surfaced in many states regarding driver's license issuance and verification and create a marker for states to target when making changes and modifications.
- **Developing uniform minimum standards** that could be adopted by

states for issuance and verification of driver's licenses through a joint CSG, NCSL and NGA effort. States would have flexibility to go beyond the minimum standards and, therefore, continue to test additional ways of enhancing the integrity of the overall system. Intergovernmental agreements to ensure compliance could also be adopted.

- **A new "Interstate Compact on Driver's License Integrity"** could be developed. Modeled on CSG's recent experience with the development and adoption of the Compact on Adult Offender Supervision, a new compact would replace the existing compacts. As a contract among states, the new compact would provide a mutually agreeable and enforceable framework for cooperative state action. Key advantages and elements of a new interstate compact include:
- **Speed of enactment:** The compact can be developed and implemented by states in as few as 30 months, consistent with CSG's experience with the adult offender compact. Compact development involves a consensus approach in which all states will have the opportunity to participate.
- **Fifty-state and full territorial adoption:** The compact's language can encourage all states to adopt it in order to provide protection from unsafe drivers for their own residents and lower associated insurance and other costs. For instance, the language of the compact can preclude the sharing of driver information with non-compacting states. Additionally, compacting states could refuse to honor the driver's licenses from non-compacting states.
- **Administration and enforcement:** The compact can establish an Interstate Commission to oversee its administration and enforcement. This Commission could be granted authority to make and enforce rules in a far more effective and dynamic way than can the federal govern-

ment, which can only establish static requirements. Enforcement provisions could include a range of mechanisms from alternative dispute resolution to fines and costs assessment, suspension and termination of membership in the compact, and judicial enforcement. The Commission would also oversee the development of an integrated information sharing system that preserves state control of driver information.


- **Cost:** Development and enactment of the compact could likely be undertaken for approximately 1 percent of the funding authorized in recently introduced legislation to federalize the driver's license. Long-term costs would be

addressed in the compact itself. This cost analysis is consistent with CSG's experience with the adult offender compact.

- **Standards:** States could mutually agree to more rigorous standards than have been proposed in federal legislation.

Conclusion

States thus far have moved expeditiously, both independently and in concert, to address the issues with the current driver's license system. Although much work remains, state leaders increasingly understand the appropriate scope of issues to be addressed and the urgency of action. CSG and NCSL, in concert with

other national organizations, remain committed to working closely together and through their members – every elected and appointed state official in the nation – to improve the integrity of the state-issued driver's license. 

— *Albert Harberson is the National Policy Director for The Council of State Governments. This article represents the organizational positions of The Council of State Governments and the National Conference of State Legislatures, and was developed with input from the National Governors Association. The original position paper was delivered to the White House on June 26, 2002.*

Driver's license summary of states' actions

Following the attacks on Sept. 11, most states undertook efforts to bolster security in the driver's licensing process. Issues such as license design changes, biometric information, increased penalties for fraud, limited replacement licenses, improved training for Department of Motor Vehicle staff members and other safeguards are all being considered or have been acted upon. Below is a summary of actions taken by states:

Expiration of visa

Several states have enacted legislation that ties expiration of an individual's driver's license to the expiration of the immigration visa. Arizona, Florida, Kentucky, Minnesota and Ohio have all passed similar legislation. Additionally, Rhode Island and Michigan have passed legislation that requires driver's license applicants to submit proof that they are in the United States legally.

Increased identification requirements

A majority of states have altered the requirements necessary to obtain a drivers license. Previously, in some states, an

applicant needed only one form of identification (in some instances, a picture identification was not required). However, following Sept. 11, restrictions have been implemented to make obtaining a driver's license more stringent, but also, safer. Delaware, Iowa, Kentucky, Minnesota and Nebraska are some of the states that mandated increased requirements in the driver's license application process.

Technological/Physical changes to driver's licenses

A few states have increased the technological aspects of their motorists' driver's licenses. These changes include biometric identifiers like thumbprints, facial structure, voice or the structure of the eye's retina to establish and verify—Georgia and West Virginia currently use this technology. California, Colorado, Florida, Georgia, Hawaii, Texas, and West Virginia collect fingerprints in the driver's licensing process, although only Georgia uses them to verify identity when issuing replacement licenses. Additionally, other states have mandated the implementation of a central database containing information on license

holders. Kansas has passed legislation requiring a person's thumbprint on the driver's license. Nebraska in 2003 will introduce a digital license containing personal information on a magnetic barcode. Connecticut will, effective July 1, 2002, issue a new driver's license containing a bar code with encrypted information, one-to-one biometric facial recognition capability, and six state-of-the-art "overt" and "covert" security features. Minnesota has passed legislation that makes noncitizen's driver's licenses a different color from a citizen's license.

Federal support against ID fraud

The federal government has also worked to aid states in the fight against ID fraud. With the passage of the USA Patriot Act, states are prohibited from issuing or renewing the license of anyone seeking to transport hazardous materials unless the U.S. Department of Transportation has cleared the individual seeking the license of any security concerns. Additionally, the Department of Justice must also perform a background investigation into the individual prior to issuance or renewal of a license.