



REGIONAL RESOURCE

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A Synopsis of a Survey on Issuing Driver's Licenses in the Southern Legislative Conference (SLC) States

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Introduction

Even before it came to light that a number of the September 11, 2001, hijackers had provided false information to secure driver's licenses from such states as Virginia and Florida, federal and state policymakers were mulling proposals to review, reform and reconstruct the integrity of state-issued driver's licenses and other forms of state-issued identification. In the aftermath of the terrorist attacks, momentum to enhance the integrity of driver's licenses issued by states has intensified considerably as federal and state policymakers vigorously debate the merits and demerits of enhancing security while staving off a national identification system. Since these disparate proposals include greater standardization among states in issuing driver's licenses and a more effective mechanism to share driver's license information across state lines, those opposed to these proposals bemoan the fact that this development would lead to a national identification system, a measure that would, they argue, erode personal privacy and result in numerous abuses. Hence, the ongoing discussion, both at the federal level in Congress and within the administration, and among states and organizations such as the American Association of Motor Vehicle Administrators (AAMVA), which represents dozens of authorities that issue licenses, pivots on how to deal equitably with both security concerns and the specter of a national identification card.

The importance of state-issued driver's licenses extends far beyond their role as the authority granted by an individual's state of residence to operate a motor vehicle both within and without the issuing state. In recent years, driver's licenses have emerged as the most sought after and, quite often, preferred form of identification for a range of essential everyday activities. These activities include cashing a check, boarding an airplane, securing a library card, exercising the right to vote and establishing one's age to purchase alcohol. In these instances and many more, Americans are routinely asked to "show" their driver's licenses to corroborate their identity, age or place of residence.

Methodology

In order to provide policymakers within The Council of State Governments' Southern Office, the Southern Legislative Conference (SLC) states with the most recent trends with respect to issuing driver's licenses, this

Regional Resource surveyed relevant officials in its 16-member states. On certain occasions, the survey was answered by staff within the state legislatures who deal with driver's license legislation; on other occasions, the survey was completed by officials within the state's department of motor vehicles (DMV) or equivalent agency. An important element of the survey questionnaire dealt with related legislation that was not enacted but rather might have been proposed and discussed during 2002 legislative sessions. These proposed items might surface again in the 2003 and subsequent legislative sessions. Appendix A presents the survey instrument which was distributed in October 2002.

In terms of format, this *Regional Resource* uses the following approach. At the outset, some background on the issuance of driver's licenses in the United States is provided. Then, the key issues in the current debate among the different policymakers including such areas

Southern Legislative Conference

Alabama ■ Arkansas ■ Florida ■ Georgia ■ Kentucky ■ Louisiana ■ Maryland ■ Mississippi ■ Missouri
North Carolina ■ Oklahoma ■ South Carolina ■ Tennessee ■ Texas ■ Virginia ■ West Virginia

as security, privacy, potential abuses, use of biometric identifiers (fingerprint scans, hand geometry, facial recognition, eye scan and voice recognition), and combating terrorism are detailed. Specifics on some of the key proposals being discussed at the federal level and presented in Congress are presented and the paper concludes by documenting the responses from the SLC states to the survey questionnaire.

History of Driver’s Licenses¹

The roots of state-issued driver’s licenses go back to the Tenth Amendment of the U.S. Constitution (enacted in 1791), which maintains that “[T]he 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.”² This important constitutional provision, which is the very basis of the unique federal-state relationship in the United States, serves as the basis for the widely divergent driver’s license issuing standards prevalent in the country. Specifically, each state determines its own rules and regulations—based on several criteria including driving standards and characteristics particular to the state—in issuing driver’s licenses to its residents. Even though most states coordinate the issuance of licenses through their departments of public safety,

some of the Southern states process driver’s licenses through their departments of motor vehicles, departments of transportation or their departments of revenue. Table 1 documents the driver’s license issuing agencies in the SLC states.

As documented in Table 1, seven of the 16 SLC states coordinate the issuance of driver’s license through their department of public safety or department of safety. Six of the remaining nine SLC states issue driver’s licenses either through their departments of motor vehicles or their departments of transportation. The remaining three states process driver’s licenses using a unit within their state department of revenue.

According to the report, *Driver’s License Integrity*, in 1908, Rhode Island became the first state to pass a driver’s license law. In subsequent years, all the states, protectorates and territories in the country passed a plethora of statutory provisions and administrative regulations prescribing standards for the privilege of driving a motor vehicle. All states have required drivers to be licensed since 1954. The eventual goal of issuing driver’s licenses in these jurisdictions was to safeguard public safety by officially testing and then recognizing those individuals authorized to operate a motor vehicle. At a minimum, these standards

Driver’s License Issuing Agency in the SLC States	
SLC State	Agency
Alabama	Department of Public Safety
Arkansas	Department of Finance and Administration
Florida	Department of Highway and Safety of Motor Vehicles
Georgia	Department of Public Safety
Kentucky	Transportation Cabinet
Louisiana	Department of Public Safety
Maryland	Department of Transportation
Mississippi	Department of Public Safety
Missouri	Department of Revenue
North Carolina	Department of Transportation
Oklahoma	State Tax Commission
South Carolina	Department of Public Safety
Tennessee	Department of Safety
Texas	Department of Public Safety
Virginia	Department of Motor Vehicles
West Virginia	Department of Transportation

Source: SLC State Web sites

include a number of essential criteria such as age, physical capacity to operate a motor vehicle, knowledge and understanding of traffic laws, eye examinations and, most importantly, actual driving competence.

Given the fact that mobility among the different states and jurisdictions within these United States is such an integral component of the economic, social, political and functional role of Americans, states have collaborated to further this important objective. These cooperative efforts ensure that not only do states recognize driver's licenses issued by a state in the operation of a motor vehicle in any state in the country, they foster the safety and viability of the nation's arteries: its roads, interstates and highways. These formal collaborative efforts, reflected in two interstate compacts, the Driver's License Compact (DLC) and the Non-Resident Violator Compact (NRVC), and administered by the AAMVA, provide the basis for both state cooperation and state information sharing. Specifically, the DLC makes certain that a driver's home state receives and processes information about traffic violations committed by that driver in another state. Established in 1961, 45 states have adopted this interstate compact. The second interstate compact, the NRVC, standardizes the techniques used by the different states in processing traffic citations received by out-of-state residents. Initially introduced in 1972, 44 states have adopted this compact.

Surrounding Issues

In the current debate swirling around driver's licenses, the central issue is moving state-issued driver's licenses toward functioning as a national identification card, with states sharing information on the individual through linked databases. Critics of this proposal allege that the potential loss of privacy as a result of enacting this measure seriously undermines the tenets of American democracy. Several sub-issues emerge to the surface in this debate and discussion, and they are vociferously argued by both proponents and opponents of converting state-issued driver's licenses into national identification cards.³ These issues include promoting uniform driver's licenses across states, protecting the privacy of those holding driver's licenses, staving off potential abuses under the new system, using biometric identifiers and combating terrorism. As expected, privacy protection remains a significant concern in a number of these issues, and opponents and

proponents of the various stances continue presenting their cases vigorously. Further exploration of some of these issues remains appropriate at this juncture.

◆ Promoting Uniform Driver's Licenses

Proponents of this measure stress that moving toward more uniform driver's licenses alongside allowing law enforcement to proactively share driver's license information across state borders will significantly enhance the security and accuracy of driver's licenses. Uniform driver's license requirements would ensure that the holder of a driver's license met certain minimum standards in terms of identification. Also, under the current system, states only check for "problem" drivers, i.e., identifying drivers who have had their licenses either suspended or revoked. In an environment in which state motor-vehicle databases are linked, the relevant state agency could inquire whether a driver's license applicant has held a license from another state, whether the applicant has had a record of traffic violations and if the applicant's license in the other state has ever been suspended or revoked. The uniform driver's license also would enable states to deploy technology highlighting the unique identifying characteristics of the individual so that law enforcement officials across the country could quickly and accurately identify the individual concerned. Those favoring this approach maintain that states would not relinquish their authority to issue and retract driver's licenses under their own rules.

On the other hand, critics of this uniform approach stress that standardizing driver's licenses will not necessarily lead to more secure or accurate driver's licenses. In this line of thinking, driver's licenses are only as effective as the supporting documents (such as birth certificates and Immigration and Naturalization Service (INS) issued visas) submitted, and that if these basic documents are forged, moving toward uniform driver's licenses would be futile. In addition, the costs associated with establishing and maintaining linked databases would be prohibitive in an environment where states face significant fiscal dilemmas. The uniform approach also would erode the flexibility of states in setting standards for issuing driver's licenses based on their own unique needs and requirements.

◆ ***Protecting the Privacy of Driver's License Holders***

Given that a range of government and private databases already maintain a treasure-trove of information on almost every American, proponents of moving toward a national identification card indicate that linking of driver's license databases across the country would not seriously erode privacy rights. The states could ensure statutorily that the information contained in these driver's license databases are used by the respective agencies for the explicit purpose of verifying names, addresses, birth dates and limited number of other unique identifying features.

Conversely, opponents of this measure indicate that linking databases with driver information would further increase the access of government to private information. Furthermore, they stress that the American tradition of restricting government access to this information, unless explicitly authorized, should not be cast aside. Given that linked databases make it easier to track and monitor people, the privacy of individuals would be seriously jeopardized as a result. Those favoring this line of thought also proffer the example of how Social Security numbers were originally supposed to be for the sole use of the Social Security Administration; this scenario changed radically in later years and, currently, Social Security numbers are routinely used by a number of different entities, both government and private.

◆ ***Staving off Potential Abuses***

In response to potential abuses that might arise as a result of 'converting' state-issued driver's licenses to function as national identification cards, supporters maintain that these driver's licenses already function without the widespread abuses alleged by critics of the measure. Given that individuals already present their driver's licenses to conduct a range of official and semi-official functions, moving toward standardized, national driver's licenses will not result in a serious disruption of their normal routines. Individuals uncomfortable with presenting their standardized driver's licenses would have the option of presenting an alternate form of identification, such as a passport or work identification card. Supporters also maintain that states could substantially increase the penalties for those found guilty of inappropriately using driver information or

insisting on driver's licenses as the only form of identification. Furthermore, supporters insist, a number of Western democracies including France, Germany, Belgium and Denmark, use national identification cards without the attendant serious abuses alleged by critics of this move.⁴

In contrast, opponents of the measure emphasize the fact that enacting a standardized driver's license would leave room for abuse by the government whether in the form of inappropriately using the information or mandating individuals to produce their driver's licenses regardless of whether the individual was suspected of wrongdoing or not. The "national" driver's license could develop into an "internal passport" with individuals being forced to produce this identification card for the most mundane of activities, such as entering a public building or renting a hotel room. These critics contend that not only would this lead to a huge influx of forged driver's licenses and an increase in the level of identity theft, the national, standardized card would discourage those seeking a driver's license from obtaining one.

A January 2003 report released by the Federal Trade Commission (FTC) further buttressed the argument of those decrying the move toward a standardized, national identification card.⁵ According to this FTC report, the number of identity theft complaints nearly doubled in 2002, making it the most widely reported consumer crime since the federal agency started issuing reports three years ago. In 2002, the FTC report noted, it received 162,000 reports of identity theft compared to 86,000 in 2001. The record number of identity theft complaints reported to the FTC in 2002 make it the single-biggest category (43 percent). Table 2 demonstrates the number of identity theft victims (per 100,000 population) in the SLC states in 2002.

Identity Theft Victims by SLC State, January 1 - December 31, 2002

SLC State	Victims Per 100,000 Population	Number of Victims	National Rank
Alabama	28.7	1,276	38
Arkansas	30.1	806	36
Florida	68.2	10,898	6
Georgia	57.5	4,709	13
Kentucky	22.8	923	46
Louisiana	29.7	1,329	37
Maryland	66.0	3,497	9
Mississippi	28.6	814	39
Missouri	45.7	2,558	18
North Carolina	42.0	3,383	21
Oklahoma	32.3	1,115	34
South Carolina	30.9	1,239	35
Tennessee	34.5	1,962	31
Texas	68.9	14,357	5
Virginia	48.0	3,395	16
West Virginia	19.9	360	47

Source: Federal Trade Commission, January 2003

Note: National rankings for all 50 states and the District of Columbia

As evident in Table 2, three SLC states, Texas, Florida and Maryland, ranked among the top 10 in the nation in terms of victims per 100,000 population. In the Southern states, Kentucky and West Virginia remained at the other of the spectrum.

◆ **Using Biometric Identifiers**

Those supporting the creation of a standardized driver’s license card are quick to stress that the inclusion of biometric identifiers—in the form of a fingerprint or a retina scan—on the card remains an integral component of it. Not only would these biometric identifiers be almost impossible to forge, they would ensure—to a very high degree of accuracy—that the individual presenting the card was in fact the individual identified on the card. Supporters of this measure stress that sufficient safeguards could be incorporated into the state statutes governing the inclusion of these biometric identifiers on the cards to ensure that the valuable information contained will be used solely for identification purposes. They also cite numerous private businesses and a limited number of government agencies that already use cards with biometric identifiers very successfully, and they indicate that

including this information on standardized driver’s licenses will not be an extreme measure.

On the other hand, critics of the measure contend that the inclusion of biometric identifiers represents a serious invasion of an individual’s privacy. Given that these identifiers contain a great deal more information than a simple photograph, the opportunities for government, or private entities, to use this critical information for purposes beyond those originally envisaged remain considerable. In addition, the argument of the biometric identifiers on the driver’s licenses only being as accurate as the primary source of information is raised again because an individual could present himself as somebody else and retain his biometric information on the driver’s license. Thus, one person’s name could be placed on the card with the biometric information of another person.

◆ **Combating Terrorism**

According to its supporters, using standardized driver’s licenses based on nationally-linked databases will enable law enforcement officials to quickly identify individuals who have violated either federal,

state or local statutes. For instance, such cards would enable law enforcement officials to identify individuals who have overstayed their immigration visa or entered the country illegally. Furthermore, law enforcement officials at the local level would be in a position to swiftly identify an individual placed on a terrorist watch list by the federal government. These measures might help ward off potential terrorist attacks in the future as federal, state and local law enforcement operate with real-time information that flows from coordinated data warehouses.

However, opponents maintain that while these documents might ensure that individuals are who they say they are, the standardized driver's licenses will not prevent those contemplating terrorist attacks from following through on these actions. As these critics maintain, most of the September 11 terrorists maintained valid immigration status alongside securing valid driver's licenses from several states. Once again, the issue of individuals using forged or illegal primary documents to "legitimize" their status with state-issued driver's licenses, whether standardized or non-standardized, will be a loophole that would prevent a tamper-proof system from working in the first place. Finally, critics of this measure suggest that standardized driver's licenses would not prevent U.S.-born terrorists, such as the Oklahoma City bomber, from carrying out violent acts.

Ongoing Federal Proposals

Given the gravity of the situation and the stress on ensuring the continued integrity of state-issued driver's licenses, a range of essential reforms proposed by a number of federal and state policymakers currently are under consideration. At the federal level, there are three pieces of legislation wending through the legislative process in Congress. While all would "federalize" the driver's license process in varying degrees, different interest groups continue to either support or oppose the proposed requirements. In essence, the three proposed bills are the following:

► ***Driver's License Integrity Act of 2002 (DLIA)***

This legislation, proposed by U.S. Senator Richard Durbin, Illinois, seeks to improve the reliability and security of state-issued driver's licenses. While the legislation calls for uniform minimum standards for issuing and administering driver's licenses, it also calls for

greater federal-state sharing of information to verify data and enhances penalties for fraud such as making or using false identification cards. In addition, the legislation requires the secretary of the U.S. Department of Transportation to develop the minimum set of verification and identification requirements in addition to supervising state implementation of the proposals.⁶ Some of the key provisions of the legislation include:

- (a) Minimum uniform standards for issuance and administration of state-issued driver's licenses;
- (b) Interstate sharing of driving information for verification with enhanced privacy protection within five years of enactment;
- (c) Enhanced ability for verification and authentication of the driver's license;
- (d) Prevention of abuse and enhanced penalties for internal fraud; and
- (e) State funding allocation.⁷

► ***Driver's License Modernization Act of 2002 (DLMA), H.R. 4633***

This legislation, proposed by U.S. Representatives Jim Moran and Tom Davis, both of Virginia, seeks to establish uniform standards for state driver's licenses within five years of the law's passage. In addition, the legislation directs the secretary of the U.S. Department of Transportation to establish necessary standards within six months of the law's adoption with assistance from the U.S. General Services Administration, the National Institute of Standards and Technology and the AAMVA. While the bill authorizes the federal government to appropriate \$315 million in grants to states to help defray the initial costs of the new system, it does not require the federal government to fund the new federally-imposed requirements even though "it repeatedly directs the Secretary of Transportation to set standards."⁸ For instance, the bill would require the federal government to issue guidelines to the states in the areas of biometric data, security features, documenting identity and residency of license applications and numbering driver's licenses. Some of the key provisions of the legislation include:

- (a) Driver's licenses will become smart cards with computer chips that store a variety of information;

- (b) Biometric data to match the license with its owner will be collected;
- (c) States' participation in national databases will be required;
- (d) Tamper-resistant security features will be incorporated into all license documents; and
- (e) States will adopt and implement procedures for accurately documenting the identity and residence of an individual before issuing a driver's license.⁹

► ***Bill Tying Expiration Date of Driver's License to Visa, H.R. 4043***

A bill, authored by U.S. Representative Jeff Flake, Arizona, passed the House Immigration and Claims Subcommittee and would require a foreign national's driver's license to expire at the same time as his or her temporary visa issued by the federal government. As detailed in this bill, federal agencies would be barred from accepting a state-issued driver's license for any identification-related purpose unless the relevant state requires that driver's licenses issued to non-immigrant aliens expire at the same time as their non-immigrant visa.¹⁰ As noted by Congressman Flake,

"It's against the law to stay in this country on an expired visa. However, many states are issuing driver's licenses to foreign nationals that expire years after their visas do. With a valid driver's license, it's easy for visa "overstayers" to blend in and stay in the U.S. for as long as they want. Several of the 9/11 hijackers were in the U.S on expired visas, yet they had no trouble traveling around the country and purchasing the supplies they needed to carry out their attacks. We need visa "overstayers" to be 'red-flagged,' and having a valid driver's license does not make that very easy."¹¹

Survey Results/State Section

In an effort to secure recent information on changes with regard to the issuance of driver's licenses by the Southern states, the SLC surveyed officials in its 16 member states. The responses of these officials are indicated below.

Question 1: Did your state pass legislation during its most recent session that tightened regulations regarding the issuance of driver's licenses? If yes, could you please identify the main features of this legislation?

- ◆ *Alabama:* No
- ◆ *Arkansas:* No
- ◆ *Florida:* Yes

CS/SB 520 revised the application for Florida identification cards and driver's licenses to include country of birth. The bill authorizes the Department of Highway Safety and Motor Vehicles to incorporate fingerprints and other unique biometric means of identity into the application for identification cards and driver's licenses. In addition, the bill limits the reciprocity for purposes of establishing proof of identity to those jurisdictions whose proof of identity requirements are at least as stringent as Florida's requirements.

The bill provides that driver's licenses issued to foreign nationals relying on certain United States Department of Justice documents for proof of identity shall expire four years from the date of issuance or upon the expiration of the applicable Department of Justice documents, whichever occurs first. Licensees subject to this provision may not renew their license except in person and upon submission of the appropriate identification documentation. The bill also provides it is unlawful to sell, manufacture, or deliver any blank, forged, stolen, fictitious, counterfeit, or unlawfully-issued driver's license or similar document. Violation of this provision would constitute a second-degree felony punishable by a term of imprisonment of 15 years and a \$10,000 fine.

- ◆ *Georgia:* No
- ◆ *Kentucky:* Summaries of 3 bills (HB 188 and HB 189) enacted in 2002 are listed below.

HB 188 - Revision of guidelines for issuing a regular Kentucky driver's license

- Restricts the ability of people to obtain a Kentucky driver's license by making a person show proof of residency which includes, but is not limited to, a deed or property tax bill, utility agreement or utility bill, or rental housing agreement.
- Requires U.S. citizens and aliens who have become residents of Kentucky and who have been granted permanent resident status by the INS to go to the circuit clerk's office in the county of their residence to apply for a driver's license.
- Requires a permanent resident to show proof that they are lawfully in the United States by presenting to the circuit clerk either an I-551 card issued by the INS, a form with a photograph of the applicant, or a passport with a photograph that has been stamped by the INS as temporary evidence of lawful admission for permanent residence, along with an expiration date and authorizing employment.
- Mandates that if a person is not a U.S. citizen and the person has not been granted permanent residency status, the person must apply for their first Kentucky driver's license at either the main office of the Transportation Cabinet located in the state capital or one of the Cabinet's field offices. The person's application must be accompanied by their INS documentation authorizing them to be in the U.S.
- Requires that if a person has been granted entrance to the U.S. for ninety days to marry a U.S. citizen (K-1 status), the application must be accompanied by an original or certified

copy of the person's completed marriage license signed by the official who presided over the marriage ceremony and two witnesses, and the person's petition to enter the U.S. for the purpose of marriage that contains the name of the prospective spouse. If the name of the prospective spouse on the petition does not match the name of the spouse on the marriage license, the Transportation Cabinet shall not be required to issue an operator's license.

- Permits the Transportation Cabinet 15 days to review the INS documentation, but if further review is necessary, the Cabinet has up to 30 days to determine if the applicant will be issued a Kentucky driver's license. If the Cabinet determines the applicant may be issued a license, the person is given a form to take to the circuit clerk, who also reviews all of the person's documentation.
- If the applicant successfully completes the written and/or skills examinations as required, and their documentation is in order, they will be issued a Kentucky driver's license.
- After the initial review of INS documentation by the Transportation Cabinet, a person goes to the office of the circuit clerk in the county where they live to renew their driver's license, unless their immigration status changes, and then they must apply to renew a driver's license with the Transportation Cabinet in the state capital or one of its field offices.
- Kentucky driver's licenses and non-driver's identification cards are issued for four years unless the person is not a U.S. citizen, has not been granted permanent resident status, or is not a special status individual, in which case the license or non-driver's identification card will be issued for the length of time their INS documentation is issued, or four years, whichever is shorter. If the person's INS documentation is issued for an indefinite period of time, the person will be issued a two-year license.

HB 189 - Revision of guidelines for issuing a commercial driver's license (CDL)

- Restricts the ability of people to obtain a commercial driver's license by making a person show proof of residency which includes, but is not limited to, a deed or property tax bill, utility agreement or utility bill, or rental housing agreement. The only exception to the residency requirement is for persons who are enrolled in a commercial truck driver training school that has been licensed by the state or in a program offered through the Kentucky Community and Technical College System.
- Persons initially applying for, or renewing, a CDL must undergo a state and national criminal history background check. A person may continue enrollment in a commercial truck driver training school if the results of their background check have not been returned within 72 hours; however, the final status of whether the applicant will be able to retain their CDL will not be determined until the results of the background check are available to the Transportation Cabinet.
- Persons applying for a duplicate CDL may apply in the office of the circuit clerk in the county of their residence. They must provide the clerk with proof of their identity and a notarized affidavit with a raised seal explaining in detail the loss or destruction of the original CDL. A person applying for a second or subsequent duplicate within the time period for which the original CDL was issued must apply to the Transportation Cabinet in the state capitol or one of the Cabinet's field offices. The person must provide proof of their identity and a notarized affidavit with a raised seal explaining in detail the loss or destruction of the previous duplicate issued. The Transportation Cabinet has 30 days to determine if the person will be issued a second or subsequent duplicate CDL.
- The fee for the first duplicate CDL issued is raised from \$10 to \$40 and to \$60 for a second or subsequent duplicate applied for within the time period for which the original CDL was issued.

- ◆ *Louisiana:* During the 2002 1st Extraordinary Session, Senate Bill 89, which became Act 46, was passed. This bill created the crime of operating a motor vehicle without lawful presence in the United States and provided relative to the issuance and cancellation of driver's licenses to alien students and nonresident aliens. Specifically, Act 46 requires that when the Office of Motor Vehicles (OMV) issues a driver's license or special identification card to an alien student or nonresident alien, the driver's license or special identification card shall expire on the date that the alien's immigration authorization from the INS expires, if the INS expiration date is less than four years. Furthermore, the renewal of such licenses or cards by mail or electronic commerce was prohibited. Lastly, Act 46 amended the list of documents of identification acceptable by OMV for issuance of a driver's license or special identification card. For a complete list of acceptable documents of identification please see R.S. 32:409.1 which is available for viewing on the Legislature's webpage. The address is www.legis.state.la.us.
- ◆ *Maryland:* In response to the September 11 terrorist attacks, the governor and General Assembly appointed a joint Anti-Terrorism Workgroup to study Maryland's laws with regard to preparations for, and protections against, terrorist activity in the state. As a result of the recommendations of the workgroup, the state enacted the Maryland Security Protection Act of 2002 (Chapter 100 of the Laws of Maryland 2002 - HB 1036), which dealt with a range of criminal and public safety issues. One of the provisions of Chapter 100 established a new crime of knowingly and fraudulently obtaining a commercial driver's license by misrepresentation. That offense is a misdemeanor punishable by up to five years imprisonment, a fine up to \$10,000, or both. Penalties were also increased for existing commercial driver's license violations, such as driving with a suspended or revoked commercial driver's license.
- ◆ *Mississippi:* Senate Bill 2182, effective July 1, 2002, prohibits issuance of a Mississippi driver's license to a person who is in this country illegally. The driver's licenses of legal aliens who have been issued a Social Security number remain the same as for other legal U.S. residents. Driver's licenses of legal aliens who have not been issued a Social Security number are valid for a period of only one year and are subject to additional legal verification. The Commissioner of Public Safety is required to adopt rules requiring documentation of an alien's legal status.
- ◆ *Missouri:* The passage of HB 1265 allows any male between the ages of 18 and 26 who applies for a driver's license instruction permit, driver's license, or driver's license renewal to register with the Selective Service System. No other bills relating to regulation of issuance of driver's licenses were passed.
- ◆ *North Carolina:* No
- ◆ *Oklahoma:* No
- ◆ *South Carolina:* H. 4670 authorizes the state's Department of Motor Vehicles (DMV) to issue driver's licenses or identification cards to non-United States citizens who are authorized by the U.S. Department of Justice, the U.S. Immigration and Naturalization Service, or the U.S. Department of State to live, work, or study in the United States on a temporary or permanent basis. Applicants who have resident alien cards will be issued a driver's license or an identification card for five years. All other applicants will be issued a driver's license or an identification card that will expire one year from the date of issuance. Beginning in March 2003, the license or identification card will be valid for a period equal to the length of time the person's visa or other document is valid. However, upon the expiration of

the one year license or identification card, the person will be required to bring the license or identification card to the DMV and get a replacement license.

- ◆ *Tennessee:* No
- ◆ *Texas:* H.B. 396, 77th Legislature (vetoed by governor). [“Under current law, all applications for a Texas driver’s license must state the applicant’s full name, and place and date of birth and must be verified by presentation of proof of identity satisfactory to the Department of Public Safety (DPS). DPS sometimes requests that social security cards be presented because DPS uses social security numbers to track applicants who owe child support. However, some applicants may not be eligible for social security cards. House Bill 396 provides a list of acceptable alternatives or documents that DPS may use in lieu of social security numbers to help applicants obtain a valid drivers license.”^{12]}
- ◆ *Virginia:* HB 638/SB 162: Enhances penalties for obtaining a driver’s license if not entitled thereto; prohibits use of immigration visas and sworn written statements or certifications as proof of residency for obtaining a driver’s license; prohibits issuance of a Virginia driver’s license bearing a non-Virginia address; requires cancellation if a license holder changes his address to a non-Virginia address (unless one of three exceptions is met); a person may hold a Virginia driver’s license or identification card, but not both; requires the Department of Motor Vehicles (DMV) to report to Senate and House Transportation Committee by December 1, 2002, the feasibility of additional enhancements to identity and residency requirements for issuing driver’s licenses, advisability of imposing a legal presence requirement, and information concerning federal statutes, regulations, and pending legislation addressing uniform standards among the states for issuance of DMV documents.

HB 637 will not become effective unless reenacted by the 2003 Regular Session of the General Assembly. State Police and the Department of Motor Vehicles would be required to participate in programs and enter into agreements with the United States Department of State, the INS, and other federal law enforcement agencies for exchange of information concerning aliens residing in the United States who hold or apply for Virginia driver’s licenses to prevent issuance to those who are not lawfully present in the United States to ensure that persons who hold or apply for these documents are lawfully entitled to do so, to detect and prevent criminal activity, and to identify and apprehend criminals.
- ◆ *West Virginia:* No

Question 2: Could you please list the estimated annual cost of enacting these reforms?

- ◆ *Alabama:* Not Applicable
- ◆ *Arkansas:* Not Applicable
- ◆ *Florida:* The fiscal impact is indeterminate. The Department will likely incur some cost associated with this bill.
- ◆ *Georgia:* Not Applicable
- ◆ *Kentucky:* The provisions enacted were mainly being implemented administratively in response to the events of September 11 and no cost was attached to the legislation.

- ◆ *Louisiana:* The expenditure effect of Senate Bill 89 (Act 46) from the 2002 1st Extraordinary Session is expected to be minimal. For a complete explanation of the fiscal impact, please refer to the fiscal note prepared by the Legislative Fiscal Office for Senate Bill 89 which is available on the Legislature's web page. The address is www.legis.state.la.us.
- ◆ *Maryland:* It is estimated that only a small number of cases are anticipated based on the new crime, not significantly affecting expenditures. Additionally, fines from the crime are not expected to significantly increase revenues.
- ◆ *Mississippi:* No specific costs are associated with the implementation of this legislation.
- ◆ *Missouri:* Not Applicable
- ◆ *North Carolina:* Not Applicable
- ◆ *Oklahoma:* Not Applicable
- ◆ *South Carolina:* Please contact John Caldwell with the South Carolina Department of Motor Vehicles at 803/737-1177 for information.
- ◆ *Tennessee:* Not Applicable
- ◆ *Texas:* Even though the bill was vetoed by the governor, it was deemed to have no significant fiscal impact on the budget of the agency or the state.
- ◆ *Virginia:* HB638 / SB162: Cost of Enacting Reforms: Expenditure impact: 2001-02: \$556,474; 2002-03: \$93,984; 2003-04: \$93,984. Revenue impact: 2002-2003 and thereafter — loss of revenues of \$727,871.
- ◆ *West Virginia:* Not Applicable

Question 3: Could you please list the specific statutes involved here?

- ◆ *Alabama:* Not Applicable
- ◆ *Arkansas:* Not Applicable
- ◆ *Florida:* The following sections of the Florida Statutes: 322.051, 322.08, 322.17, 322.18, 322.19, 322.212
- ◆ *Georgia:* Not Applicable
- ◆ *Kentucky:* The statutes affected were in Kentucky Revised Statutes Chapters 186 and 281.
- ◆ *Louisiana:* Changes in the statutes made pursuant to passage of Senate Bill 89 (Act 46) from the 2002 1st Extraordinary Session relative to driver's licenses and special identification cards are R.S. 32:409.1, R.S. 32:412, R.S. 32:414, and R.S. 40:1321.
- ◆ *Maryland:* Sections 16-808, 16-813.1, and 27-101(s) of the Transportation Article of the Annotated Code of Maryland.
- ◆ *Mississippi:* Sections 63-1-19, 63-1-47, 63-1-43 and 63-1-35, Mississippi Code of 1972.
- ◆ *Missouri:* 302.169, RS Mo.
- ◆ *North Carolina:* Not Applicable
- ◆ *Oklahoma:* Not Applicable
- ◆ *South Carolina:* South Carolina Code Section 56-1-40.
- ◆ *Tennessee:* Not Applicable
- ◆ *Texas:* HB 396, 77th Legislature (vetoed by governor).
- ◆ *Virginia:* Va. Code § 46.2-105.2, 46.2-308, 46.2-323.1, 46.2-324, 46.2-341.11, 46.2-341.15, 46.2-342, and 46.2-345.

- ◆ *West Virginia:* Not Applicable

Question 4: If your state did not enact legislation during the most recent session, were there bills related to this topic that were considered? If yes, could you please provide the principal features of the main bills that were not successful?

- ◆ *Alabama:* H. 419 sought to authorize the Department of Public Safety (DPS) to implement certain security upgrades on driver's licenses. Specifically, the bill sought to authorize the following:

Section 1. The DPS may implement the following new security features on driver's licenses of persons under 21 years of age:

- (1) All licenses shall be printed vertically.
- (2) On the vertical license, red lettering shall indicate "under 18 until" or "under 21 until" and include a date to assist businesses in reviewing the license if the person attempts to purchase tobacco or alcohol or tries to enter a business with age restrictions.

Section 2. The department may implement the following security upgrades for motorists who have been licensed to drive in the state:

- (1) A red heart on the front of the license to indicate if the bearer is an organ donor.
- (2) Features to help law enforcement officials and state troopers determine if the motor vehicle belongs to the person driving.
- (3) Bar codes similar to an ATM card with a criminal history.

- ◆ *Arkansas:* Not Applicable

- ◆ *Florida:* Not Applicable

- ◆ *Georgia:* The following three bills were introduced during the 2002 Legislative Session:

- (1) House Bill 1008 provided that any driver's license issued on or after July 1, 2002, must indicate whether or not the licensee is a citizen of the United States. If he/she is not a citizen, the driver's license must indicate the expiration date of such person's legal authorization from the U.S. Immigration and Naturalization Service to remain in the United States.

The bill also provided that an alien's driver's license will either expire in the fourth year following its issuance or on the expiration date of his/her legal authorization to remain in the United States, whichever occurs first.

House Bill 1008 also would have required aliens to have documented proof of legal authorization from the U.S. Immigration and Naturalization Service in order to be defined as Georgia residents for the purpose of obtaining a Georgia driver's license.

- (2) Senate Bill 480 provided that any driver's license issued on or after July 1, 2002, must indicate whether or not the licensee is a citizen of the United States. The bill also provided that an alien's driver's license will either expire in the fourth year following its issuance or on the expiration date of his/her legal authorization to remain in the United States, whichever happens first.
- (3) Senate Bill 314 provided that any driver's license issued on or after July 1, 2002, must indicate whether or not the licensee is a citizen of the United States.

- ◆ *Kentucky:* Not Applicable

- ◆ *Louisiana:* As described previously, Louisiana did enact legislative changes.

- ◆ *Maryland:* One bill that was withdrawn by the sponsor would have required a national and state criminal background check of an applicant for a commercial driver's license to operate a vehicle required to be placarded for hazardous materials.
- ◆ *Mississippi:* Not Applicable
- ◆ *Missouri:* No
- ◆ *North Carolina:* No
- ◆ *Oklahoma:* Legislation has been introduced the last two sessions to require the Department of Public Safety (licensing authority in Oklahoma) to provide driver's license testing in the Spanish language. Language was enacted to require Spanish testing if funds were available. It should be noted that a proposal requiring that all official state business be conducted in English has challenged the move to offer driver's license testing in Spanish.¹³
- ◆ *South Carolina:* Not Applicable
- ◆ *Tennessee:* There was a bill that would require presentation of a Social Security number or valid Immigration and Naturalization Service (INS) documents as a prerequisite to the issuance of a driver's license. This bill was amended several times: one version called for applicants that could not present a Social Security number or valid INS documents to be issued a certificate valid for only one year which clearly stated "Driver Certificate - Valid Only for Vehicular Use." Also under this version, photo identification only licenses would not be issued without presentation of a Social Security number or valid INS documents.
- ◆ *Texas:* Not Applicable
- ◆ *Virginia:* Not Applicable
- ◆ *West Virginia:* No

Question 5: Have there been bills in your state that considered the issuance of driver's licenses to those without proof of legal residence (such as migrant/agricultural workers) in the United States? If yes, can you please provide details of the main discussion points?

- ◆ *Alabama:* No
- ◆ *Arkansas:* Not Applicable
- ◆ *Florida:* Not in recent years.
- ◆ *Georgia:* Prior to the September 11, 2001 tragedy, House Bill 851 was introduced. In 2002, House Resolution 975 was introduced which calls for further study regarding House Bill 851.

House Bill 851, introduced during the 2001 Legislative Session, provides that defining residency for the purpose of obtaining a driver's license shall be determined without regard to whether the person is either a United States citizen or an alien with or without legal authorization from the U.S. Immigration and Naturalization Service.
- ◆ *Kentucky:* A bill to allow undocumented aliens to obtain a Kentucky driver's license was introduced in the 2002 session. It was supported by the Catholic Conference and several Latino constituent groups. The bill ran into opposition after September 11 and it was amended to create a task force to study the issue. The bill proposing the task force passed the House but died in the Senate without a hearing. The sponsor of the original bill, Rep.

Jack Coleman, has pre-filed another bill for the 2003 session that would allow undocumented aliens from Mexico and Canada to obtain a Kentucky driver's license. The bill is 03 RS BR 81 and it may be viewed at the General Assembly's home page, www.lrc.state.ky.us.

- ◆ *Louisiana:* R.S. 32:409.1(A)(2)(d)(vi) provides, in part, that any alien individual residing in Louisiana who does not possess and is ineligible to obtain a Social Security number shall not be required to furnish a Social Security number for issuance of a Class "E" driver's license. However, prior to issuance of such license, in addition to other required documentation, the department of public safety shall require the alien individual to present a document demonstrating lawful presence in the United States in a status in which the alien individual may be ineligible to obtain a Social Security number. R.S. 32:409.1 is available for review on the Legislature's web page at www.legis.state.la.us.
- ◆ *Maryland:* As introduced, the Maryland Security Protection Act (see Question 1) contained a provision which would have prohibited the state Motor Vehicle Administration from issuing a driver's license to any individual who is not a citizen of the United States, unless the individual possessed a valid foreign passport with a valid U.S. visa or other entry document issued by the United States Immigration and Naturalization Service (INS). The provisions were deleted from the bill in conference committee.
- ◆ *Mississippi:* No
- ◆ *Missouri:* House Bill 1881 would have allowed the Director of the Department of Revenue to require aliens, when applying for a driver's license, to provide a translated and notarized copy of a birth certificate in addition to all other required information.
- ◆ *North Carolina:* One bill was introduced but was not taken up in committee.
- ◆ *Oklahoma:* No. While the issue of Spanish testing did involve some conversation on the legal status of the applicant, there was no specific language written to address proof of residence.
- ◆ *South Carolina:* Yes. H. 3306, which did not pass, provided that driver's licenses could not be issued to illegal aliens.
- ◆ *Tennessee:* Not applicable. Currently in Tennessee, applicants for a driver's license must show proof of age and identity, a Social Security number if one has ever been issued; if a Social Security number has never been issued, the applicant can sign an affidavit. The state require presentation of two (2) proofs of Tennessee residency. There is no requirement for legal presence.
- ◆ *Texas:* Not applicable. HB 396, 77th Legislature (vetoed by governor).
- ◆ *Virginia:* No. Virginia statutes currently do not provide for the requirement that an applicant have or prove legal presence in order to obtain a Virginia driver's license. In the 2002 General Assembly, several bills were introduced which would have imposed a legal presence requirement in the issuance of driver's licenses. At one point, one such bill would have grandfathered individuals who already held Virginia driver's licenses prior to enactment, thereby exempting them from any proof of legal presence requirement. Ultimately, however, the legal presence requirement was completely stricken from that bill and no bill containing a legal presence requirement was enacted.
- ◆ *West Virginia:* No

Question 6: Does your state employ any biometric techniques (such as fingerprint, hand or iris scanners) to ensure the integrity of driver's licenses? If yes, can you please describe the technique and when this technology was first introduced?

- ◆ *Alabama:* No
- ◆ *Arkansas:* Yes. Voluntary fingerprints (which persons can choose to use). They are not actually on the driver's license, but available only at the Revenue Office and used only in driver's license transactions such as renewals. This was available in 1999 (and no associated legislation).
- ◆ *Florida:* No
- ◆ *Georgia:* Yes. The Georgia Department of Motor Vehicle Safety (DMVS) requires every person who obtains a driver's license to submit to a fingerprint scan. The fingerprint scan is stored in the DMVS system as well as in the bar code on each driver's license.
- ◆ *Kentucky:* No
- ◆ *Louisiana:* No
- ◆ *Maryland:* No. There have been discussions by the Motor Vehicle Administration to begin studying biometric identifiers, but no formal action has been taken to include those techniques into the licensing programs.
- ◆ *Mississippi:* No. In January 2003, computer facial recognition and touch signature technology will be introduced.
- ◆ *Missouri:* No
- ◆ *North Carolina:* No. The Division of Motor Vehicles is seeking funds to study the use of facial recognition technology.
- ◆ *Oklahoma:* No
- ◆ *South Carolina:* No
- ◆ *Tennessee:* No
- ◆ *Texas:* Not applicable. The Department of Public Safety (DPS) has the capacity to capture fingerprints and does so at the time of license application, but DPS does not have the capacity to automatically compare fingerprints. Fingerprints are used in criminal identifications or emergency identifications (such as identifying a body), but the fingerprint comparisons are made manually, on a case-by-case basis.
- ◆ *Virginia:* No. Virginia does place a digital image/photograph (which may be classified as biometric) on the driver's license and stores the image on the department of motor vehicle's system electronically. The digital image technology was implemented in or around the early 1990s.
- ◆ *West Virginia:* Yes. October 1997.

Question 7: If appropriate, please describe any baseline privacy protections that govern the use of the biometric information that is secured?

- ◆ *Alabama:* Not Applicable
- ◆ *Arkansas:* This information is not released to anyone; it is only used in driver's license transactions at the Revenue Office.
- ◆ *Florida:* Not Applicable

- ◆ *Georgia:* OGGA 40-5-2 sets the parameters on how and when this “personal information” may be disseminated. Please contact Neal Childers, Legal Counsel, Georgia DMV, at (678) 413-8765 for a detailed explanation.
- ◆ *Kentucky:* Not Applicable
- ◆ *Louisiana:* Not Applicable
- ◆ *Maryland:* Not Applicable
- ◆ *Mississippi:* None presently adopted or articulated.
- ◆ *Missouri:* Not Applicable
- ◆ *North Carolina:* Not Applicable
- ◆ *Oklahoma:* Not Applicable
- ◆ *South Carolina:* Not Applicable
- ◆ *Tennessee:* Not Applicable
- ◆ *Texas:* According to the Texas Office of House Bill Analysis, “House Bill 678 amends the Business & Commerce codes relating to the capture and use of a biometric identifier, which is a retina or iris scan, fingerprint, voice-print, or record of hand or face geometry. The bill prohibits a person from capturing a biometric identifier of an individual for a commercial purpose without informed consent. The bill also prohibits a person or governmental body from selling, leasing, or disclosing a biometric identifier unless the individual consents, the disclosure completes a financial transaction requested or authorized by the individual, the disclosure is required or permitted by a federal or state statute, or the disclosure is made for law enforcement purposes. A person or governmental body is required to store, transmit, and protect the biometric identifier from disclosure using reasonable care and a manner that is at least as protective as other confidential information. The bill provides that a person who violates these provisions is subject to a civil penalty of not more than \$25,000, that the attorney general is authorized to recover. A governmental body that possesses a biometric identifier is exempt from disclosure under the public information law.” This bill was signed by the governor on June 13, 2001 and was effective on September 1, 2001.¹⁴
- ◆ *Virginia:* The digital image/photograph, under the Federal Driver’s Privacy Protection Act, is deemed to be highly restricted personal information, is afforded significant protection, and may be released only to certain entities and/or under limited circumstances. Virginia statutes (Va. Code §46.2-208 and Va. Code §§2.2-3802 et. seq, the “Government Data Collection and Dissemination Practices Act”) also treat photographs as personal information and prohibit release except for limited purposes or to certain entities.
- ◆ *West Virginia:* Finger images are exclusively for use by the department of motor vehicles in ascertaining identity matches and are not available for any other uses, including by law enforcement.

Conclusion

The need to enhance the integrity of state-issued driver's licenses was a step that states were grappling with well before the September 11 terrorist attacks. In the aftermath of the attacks, state efforts to achieve this goal and enact measures to stave off or make it more difficult to forge or falsely obtain licenses have intensified. It is expected that these efforts will continue under the current and future scenarios. The federal government also has expressed interest in this area, and a number of competing proposals were deliberated in Congress and will continue to be discussed in the future. Yet,

the need for greater security measures have generated concerns about civil liberties and the potential for fraud and abuse as a result of states moving toward more standardized and uniform driver's licenses. The possibility of some form of a national identification card emerging as a result of these federal and state efforts alongside the sharing of databases is another area that has generated a fair amount of controversy in this current debate. In their deliberations, policymakers continue to weigh the competing forces of needing to improve the integrity of driver's licenses while preserving the privacy rights of individuals.

Endnotes

- ¹ The section on the history of state-issued driver's licenses draws on "Driver's License Integrity," Internal Guidance Document, The Council of State Governments and the National Conference of State Legislatures, June 25, 2002.
- ² "The Constitution of the United States of America" in Barker, Lucius J. and Barker, Twiley, W. Jr., *Civil Liberties and the Constitution*, Sixth Edition, 1990, p. 673.
- ³ This section draws on "Standardizing Driver's Licenses: Security, Privacy, and Other Issues," Texas House of Representatives, House Research Organization, Number 77-20, May 31, 2002.
- ⁴ It should be noted that generally Europeans are comfortable displaying their identification cards anywhere and at anytime when requested by law enforcement and it could be argued that Americans would be less willing to comply with such a request.
- ⁵ "FTC Releases Top 10 Consumer Complaint Categories in 2002: As in 2000 and 2001, Identity Theft Tops the List," News Release, January 22, 2003, www.ftc.gov.
- ⁶ *Ibid.*
- ⁷ "Driver's License Integrity," Internal Guidance Document . . .
- ⁸ *Ibid.*
- ⁹ "Driver's License Integrity," Internal Guidance Document . . .
- ¹⁰ "Standardizing Driver's Licenses . . .
- ¹¹ Congressman Jeff Flake, Arizona, "House Immigration Subcommittee Passes Congressman Flake's Bill Tying Expiration Date of Driver's to Visa," Press Release, May 2, 2002.
- ¹² 77(R) HB 396, Enrolled Version, Bill Analysis, Texas Legislature Online, www.capitol.state.tx.us.
- ¹³ "Law May Stop Spanish Test Option," *The Oklahoman*, January 27, 2003.
- ¹⁴ 77(R) HB 678, Enrolled Version, Bill Analysis, Texas Legislature Online, www.capitol.state.tx.us.

Appendix A
Southern Legislative Conference
Survey Questionnaire

Regional Resource on “Recent Trends Related to Issuing Driver’s Licenses in the SLC States”

- I. (a) Did your state pass legislation during its most recent session that tightened regulations regarding the issuance of driver’s licenses?
 - (b) If yes, could you please identify the main features of this legislation?
 - (c) Could you please list the estimated annual cost of enacting these reforms?
 - (d) Also, could you please list the specific statutes involved here?
- II. (a) If your state did not enact legislation during the most recent session, were there bills related to this topic that were considered?
 - (b) If so, could you please provide the principal features of the main bills that were not successful?
- III. (a) Have there been bills in your state that considered the issuance of driver’s licenses to those without proof of legal residence (such as migrant/agricultural workers) in the United States?
 - (b) If so, can you please provide details of the main discussion points?
- IV. (a) Does your state employ any biometric techniques (such as fingerprint, hand or iris scanners) to ensure the integrity of driver’s licenses?
 - (b) If so, can you please describe the technique and when this technology was first introduced?
 - (c) If appropriate, please describe any baseline privacy protections that govern the use of the biometric information that is secured?

This Regional Resource was prepared for the Economic Development, Transportation and Cultural Affairs Committee of the Southern Legislative Conference (SLC) by Sujit M. CanagaRetna, SLC Regional Representative. The SLC is a non-partisan, non-profit organization serving Southern state legislators and their staffs. First organized in 1947, the SLC is a regional component of The Council of State Governments, a national organization which has represented state governments since 1933. The SLC is headquartered in Atlanta, Georgia.