

# NATIONAL IMMIGRATION LAW CENTER

## Side-by-Side Comparison of the Driver's License<sup>1</sup> Provisions in the House and Senate 9/11 Bills (HR 10 and S. 2845)

October 2004

PROVISION	HOUSE (HR 10)	SENATE (S. 2845)
<b>State Compliance</b>	<ul style="list-style-type: none"> <li>◆ § 3052(a)(1) – No federal agency may accept a DL issued by a state more than three years after new requirement goes into effect unless it conforms to the minimum standards established by the bill.</li> <li>◆ § 3056(b) – The Secretary of DHS may grant a state an extension if the state provides adequate justification for noncompliance.</li> <li>◆ § 3052(a)(2) – Each state will certify with DHS that the state is in compliance with the new requirements. The process of certifications will be established by regulation by DHS in consultation with DOT.</li> </ul>	<ul style="list-style-type: none"> <li>◆ No federal agency may accept a DL issued by a state more than two years after new requirement goes into effect unless it conforms to the minimum standards established by DOT.</li> <li>◆ The secretary of DOT can extend the date by two years if the secretary determines that the state made reasonable efforts to comply with the requirements but was unable to do so.</li> <li>◆ Each state will certify with DOT that the state is in compliance with the new requirements. The process of certifications will be established by regulation by DOT in consultation with DHS.</li> <li>◆ DOT may conduct periodic audits of each state's compliance with the requirements.</li> <li>◆ DOT shall establish a "negotiated rulemaking" process before publishing proposed regulations on standards for documentation, verifiability of documents, processing of applications and security.</li> <li>◆ Any recommendations for a proposed rule or report must be provided to DOT no later than 9 months after bill is signed into law. The final rule must be promulgated by DOT no later than 18 months after the bill is signed into law.</li> <li>◆ The negotiated rulemaking committee established by DOT shall include representatives from state offices that issue DLs, state elected officials, DHS, and interested parties, including organizations with technological and operational expertise in document security and organizations that represent the interests of applicants for DLs.</li> </ul>
<b>Driver's License Features</b>	<p>§ 3052(b) – A state shall include at minimum the following information and features on each DL: the person's full name; date of birth; gender; DL number; digital photograph; address; signature; physical security feature designed to prevent counterfeiting and fraud; and a common machine-readable technology, with defined minimum data elements.</p>	<p>The regulations promulgated by DOT through the negotiated rule-making process may not require a single design to which DLs issued by all states must conform.</p>

<sup>1</sup> The requirements in HR 10 and S. 2845 apply both to driver's licenses and state identification cards; however, this chart will only reference driver's licenses.

PROVISION	HOUSE (HR 10)	SENATE (S. 2845)
<b>Minimum DL Issuance Standards</b>	<ul style="list-style-type: none"> <li>◆ § 3052(c) – A state shall require, at minimum, presentation and verification of the following information before issuing a DL:                             <ul style="list-style-type: none"> <li>– a photo ID document (nonphoto ID acceptable if it includes both the person's full name and his or her date of birth);</li> <li>– documentation showing the person's date of birth;</li> <li>– proof of the person's SSN or verification that the person is not eligible for an SSN; and</li> <li>– documentation of state residency.</li> </ul> </li> <li>◆ § 3052(d)(3) – States must subject each person applying for a DL to mandatory facial image capture.</li> <li>◆ § 3052(d)(6) – States must refuse to issue a DL to a person holding a DL issued by another state without confirmation that the person is terminating or has terminated the DL.</li> </ul>	<p>The regulations promulgated by DOT through the negotiated rule-making process shall include standards for documentation required as proof of identity of an applicant for a DL.</p>
<b>Immigration Requirements</b>	<ul style="list-style-type: none"> <li>◆ § 3052(c)(2)(B) – Each DL applicant must demonstrate proof that he or she: is a U.S. citizen; is a lawful permanent resident; is a temporary resident; is a conditional resident; is a nonimmigrant with a valid, unexpired visa; has a pending or approved application for asylum; is a refugee; has a pending or approved application for temporary protected status; has approved deferred action status; <i>or</i> has a pending application for permanent residence or conditional permanent residence.</li> <li>◆ § 3052(c)(2)(C) – An immigrant who is not admitted for permanent, temporary or conditional resident status may only receive a “temporary driver's license.”</li> <li>◆ § 3052(c)(2)(C)(ii) – A temporary DL may be valid only for the period of the applicant's authorized stay in the U.S. or one year if there is no definite end to the period of authorized stay.</li> <li>◆ § 3052(c)(2)(C)(iii) – A temporary DL must clearly indicate that it is temporary and shall state the date on which it expires.</li> <li>◆ § 3052(c)(2)(C)(iv) – A temporary DL may be renewed upon proof by DHS that the person still holds a valid immigration status.</li> <li>◆ § 3052(c)(3) – States cannot presume that any DL for which an application has been made for renewal, duplication, or reissuance has been issued in accordance to the new standards if the state is notified by a local, state or federal government agency that the person is not legally in the U.S.</li> </ul>	<p>None</p>

PROVISION	HOUSE (HR 10)	SENATE (S. 2845)
<b>Security Standards and Fraud Prevention</b>	<ul style="list-style-type: none"> <li>◆ § 3052(b)(8) and (9) – The DL must contain physical security features designed to prevent tampering, counterfeiting, or duplication of the document for fraudulent purposes and a common machine-readable technology with defined minimum data elements.</li> <li>◆ § 3052(d)(7) – States must ensure the physical security of locations where DLs are produced and the security of document materials and papers from which DLs are produced.</li> <li>◆ § 3052(d)(8) – States must subject all persons authorized to manufacture or produce DLs to appropriate security clearance requirements.</li> <li>◆ § 3052(d)(9) – States must establish fraudulent document-recognition training programs for employees engaged in the issuance of DLs.</li> <li>◆ § 3054 – Penalizes persons who knowingly traffic in false or actual authentication features for use in false identification documents, document-making implements, or means of identification.</li> </ul>	<p>DOT, through the negotiated rulemaking process, shall promulgate regulations that shall</p> <ul style="list-style-type: none"> <li>◆ include standards for the processing of applications for a DL to prevent fraud;</li> <li>◆ include security standards to ensure that DLs are resistant to tampering, alteration or counterfeiting and capable of accommodating and ensuring the security of a digital photograph or other unique identifier; and</li> <li>◆ require that a state confiscate a DL if any component of the DL's security feature is compromised.</li> </ul>
<b>Verification of Information</b>	<ul style="list-style-type: none"> <li>◆ § 3052(c)(4)(A) – States must verify with the issuing agency the issuance, validity, and completeness of each document required to be presented.</li> <li>◆ § 3052(c)(4)(B) – States shall not accept any foreign document other than an official passport as proof of identification.</li> <li>◆ § 3052(c)(4)(C) – States must enter into an MOU with DHS to use SAVE to verify the legal presence of all noncitizen DL applicants no later than Sept. 11, 2005.</li> <li>◆ § 3052(d)(4) – States must establish an effective procedure to confirm or verify a renewing applicant's information.</li> <li>◆ § 3052(d)(5) – States must confirm with the SSA the SSN presented by an applicant, and if it is already registered to or associated with another person, the state shall resolve the discrepancy and take appropriate action.</li> </ul>	<p>The regulations promulgated by DOT through the negotiated rule-making process shall include standards for the verifiability of documents used to obtain a DL.</p>
<b>Information Sharing</b>	<ul style="list-style-type: none"> <li>◆ § 3053(a) – A state may be eligible for a grant or other type of financial assistance to implement requirements in the bill only if it participates in the "Driver License Agreement" administered by AAMVA, which would provide electronic access by a state to information contained in the motor vehicle databases of all other states.</li> </ul>	<p>The regulations promulgated by DOT through the negotiated rule-making process shall facilitate communication between the chief driver licensing official of a state, an appropriate official of a federal agency and other relevant officials, to verify the authenticity of documents, as appropriate, issued by such federal agency or entity and presented to prove the identity of an individual.</p>

PROVISION	HOUSE (HR 10)	SENATE (S. 2845)
<b>Data Storage</b>	<ul style="list-style-type: none"> <li>◆ § 3052(d)(1) – States must employ technology to capture digital images of identity source documents so that the images can be retained in electronic storage in a transferable format.</li> <li>◆ § 3052(d)(2) – States must retain copies of source documents for a minimum of 7 years or images or source documents for a minimum of 10 years.</li> <li>◆ § 3053(b) – State motor vehicle databases must store all data fields printed on a DL and drivers' histories, including motor vehicle violations, suspensions, and points on DLs.</li> </ul>	None
<b>Privacy and Civil Rights Protections</b>	None	The regulations promulgated by DOT shall include procedures and requirements to protect the privacy and civil and due process rights of individuals who apply for and hold DLs.
<b>Limitations of Federal Law</b>	None	<p>The regulations promulgated by DOT through the negotiated rule-making process</p> <ul style="list-style-type: none"> <li>◆ may not infringe on a state's power to set criteria concerning what categories of individuals are eligible to obtain a DL; and</li> <li>◆ may not require a state to comply with any such regulations that conflicts with or otherwise interferes with the full enforcement of state criteria concerning the categories of individuals that are eligible to obtain a DL.</li> </ul>
<b>Grants to States</b>	<ul style="list-style-type: none"> <li>◆ § 3055(a) – DHS may make grants to states to assist them in conforming to minimum standards for DLs.</li> <li>◆ § 3055(b) – Authorizes appropriations to DHS from 2005 to 2009 to carry out the new requirements.</li> </ul>	<ul style="list-style-type: none"> <li>◆ DOT shall award grants to states to assist them in conforming to minimum standards for DLs.</li> <li>◆ The amount of the grant awarded to each state will be determined by calculating the ratio of (a) the estimated average number of DLs (and identification cards) the state issues annually to (b) the average total number of DLs (and IDs) issued annually by all 50 states.</li> <li>◆ No state shall receive less than 0.5% of the grant funds made available.</li> <li>◆ Authorizes appropriations to DOT from 2005 to 2009 to carry out requirements.</li> </ul>

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