



**SB 715 - Testimony for the Senate Judicial Proceedings Committee
Maryland Highway Safety Act of 2013
February 20, 2013**

AMERICAN CIVIL
LIBERTIES UNION
OF MARYLAND

MAIN OFFICE
& MAILING ADDRESS
3600 CLIPPER MILL ROAD
SUITE 350
BALTIMORE, MD 21211
T/410-889-8555
or 240-274-5295
F/410-366-7838

FIELD OFFICE
6930 CARROLL AVENUE
SUITE 610
TAKOMA PARK, MD 20912
T/240-274-5295

WWW.ACLU-MD.ORG

OFFICERS AND
DIRECTORS
ALLI HARPER
PRESIDENT

SUSAN GOERING
EXECUTIVE DIRECTOR

C. CHRISTOPHER BROWN
GENERAL COUNSEL

SUPPORT

The ACLU of Maryland strongly supports this much-needed proposal to expand Maryland residents' access to a license to drive. Without a license to drive, individuals cannot perform the most essential daily functions and activities, such as taking their children to school, going to medical visits, grocery shopping, keeping medical appointments, or going to and from their places of employment. In addition, expanding access to licenses to drive is critical for highway safety. For these and many other reasons, we believe it is essential for all Marylanders to have access to a license to drive, regardless of their ability to prove lawful immigration status. Our testimony today will focus on two key issues: First, we clarify that providing access to limited use driver's licenses for persons without proof of lawful immigration status does not affect Maryland's compliance with the requirements of the REAL ID Act of 2005 and does not raise national security concerns. Second, we recommend the inclusion of a provision to ensure that holders of the limited use driver's license are not subjected to discriminatory treatment.

I. REAL ID Compliance

In December of 2012, the Department of Homeland Security declared Maryland to be one of thirteen states that meet the requirements of the REAL ID Act of 2005.¹ The introduction of a limited use driver's license in no way alters that fact. The REAL ID Act does not prohibit the issuance of driver's licenses or identification cards to persons who are unable to provide proof of lawful immigration status. Instead, the REAL ID Act makes provisions for just that circumstance when it requires distinguishing those licenses from licenses that meet the enumerated identification requirements specified in the Act.²

Indeed, even for federal purposes, the limitation on uses of driver's licenses that do not meet the above-mentioned identification requirements is extremely

¹ PL 10-13, May 11, 2005, 119 Stat 231, codified at 49 USC § 30301 note. For a list of the 13 states that meet REAL ID standards, including Maryland, *see* DHS Determines 13 States Meet Real ID Standards, December 20, 2012, *available at* <http://www.dhs.gov/news/2012/12/20/dhs-determines-13-states-meet-real-id-standards>.

² *See* 49 USC § 30301 note 202(d)(11).

narrow. The REAL ID Act prohibits the use of such licenses only for official federal purposes, and DHS regulations explicitly limit the definition of those terms to three very specific circumstances: “Official purpose means accessing Federal facilities, boarding Federally-regulated commercial aircraft, and entering nuclear power plants.”³ Thus, the use of a limited use driver’s license would be acceptable for all other purposes, and the issuance of limited use driver’s licenses does not undermine Maryland’s compliance with REAL ID Act provisions. Moreover, in practice, non-REAL ID compliant driver’s licenses are routinely accepted even for the federal purposes specified in the Act such as boarding federally-regulated commercial aircraft, since so few states comply with REAL ID requirements.

Thus, whatever our respective positions on the ultimate merits of the REAL ID Act,⁴ we can all agree that providing access to a limited, clearly distinguishable driver’s license, as this proposal would do, would have no effect on Maryland’s status as one of thirteen states that has met the requirements of the REAL ID Act of 2005.

II. National Security Considerations

It should also be clear that granting driver’s licenses to individuals who cannot show proof of lawful immigration status but who otherwise meet Maryland’s identification requirements does not pose a threat to national security. The 9/11 Commission, which considered at great length the implications of various policies and laws on national security, did not recommend tying access to driver’s licenses to immigration status. Instead, in a 2004 letter to Senator Susan Collins and Representative Peter Hoekstra, Commission Chair Thomas Kean and Vice-Chair Lee Hamilton objected to the inclusion of anti-immigrant provisions, including restrictions on access to driver’s licenses, in proposed national security legislation. Expressing the unanimous view of the Commissioners, they noted:

We believe strongly that this bill is not the right occasion for tackling controversial immigration and law enforcement issues that go well beyond the Commission’s recommendations. We note in this regard that some of these provisions have been advocated in response to Commission recommendations. They are not Commission recommendations.

The letter went on to note that these “controversial provisions” relating to immigration status “are more central to the question of immigration policy than they are to the question of counterterrorism.”⁵ The Commission did not recommend the adoption of the REAL ID Act of 2005 or of proof of legal status as a requirement for the issuance of a license to drive.

³ 6 CFR § 37.3, 73 Fed. Reg. 5271 (January 29, 2008).

⁴ The ACLU has opposed and continues to oppose REAL ID implementation in Maryland and nationwide.

⁵ See AILA Press Release: House and Senate Conferees Meet on 9/11 Legislation, available at <http://www.aila.org/content/default.aspx?docid=11693>.

It is also important to note that only thirteen out of fifty states have met the identification requirements specified in the REAL ID Act of 2005,⁶ yet their driver's licenses are routinely accepted for official federal purposes. Fifteen states have specifically rejected the implementation of REAL ID standards of identification by passing legislation prohibiting state agencies from imposing those requirements. DHS has not penalized holders of licenses from those states in any way. Instead, DHS continually postpones implementation of the REAL ID Act⁷ and appears to have only 4 full-time employees working on REAL ID compliance.⁸ The natural inference to be drawn from these facts is that meeting REAL ID requirements is not regarded as a national security priority.

Thus, the fact that the proposed limited use driver's licenses would actually meet REAL ID standards means that it more than satisfies any concerns relating to national security.

III. Anti-discrimination

We end with a friendly recommendation. Because of the clearly distinguishable nature of the limited use driver's licenses that would be issued under this proposal, we are concerned about potential discrimination against its holders. We would therefore recommend the addition of an explicit anti-discrimination provision stating that:

An officer of the peace shall not detain, arrest, penalize, or otherwise discriminate against a person on the basis of that person's presentation of a driver's license issued under this section of the Act.

The addition of this provision would ensure that any Maryland resident who wishes to do so can apply for this driver's license without fear of discrimination, and would assure Marylanders that for state purposes, there is no functional difference between the two available licenses.

In this connection, it is important to note that such a provision would likely protect both U.S. citizens and immigrants alike. In 2006, for example, as many as 13 million United States citizens lacked ready access to documentary proof of their citizenship, including 12 percent of low-income citizens earning less

⁶ See DHS Determines 13 States Meet Real ID Standards, *supra* note 1.

⁷ The REAL ID Act provided for implementation within 3 years, by May 2008. In January 2008 DHS postponed that deadline till 2009 and 2011 for different parts of the Act. Further extensions were granted in December 2009 and January 2011. The current nominal compliance deadline has been extended to January 2013, *see* 76 Fed. Reg. 12269, and is likely to be postponed again given that at least 15 states have explicitly rejected compliance and that only 13 states are currently in compliance with the Act.

⁸ *Oversight Hearing on the Department of Homeland Security: Hearing Before the H. Judiciary Committee*, 112th Cong. (Oct. 26, 2012).

than \$25,000 per year.⁹ Thus, not all Marylanders who benefit from limited use driver's licenses will necessarily be immigrants. Individuals who lack birth certificates and passports, for example, would have an alternative option available to them under this proposal and should be protected from discrimination.

It is also important to note that not every immigrant who is lawfully present in the United States is able to provide *proof* of lawful presence. As one Pennsylvania court has noted, when individuals are in the process of adjusting their status from one immigrant category to another, they may lack documents to show proof of lawful presence, and the process is often lengthy and complicated.¹⁰ Thus, “[a] person who is proceeding through the procedure to adjust his immigration status but who currently lacks immigration status frequently will not have any documents to indicate whether he has a valid claim to remain in the country.”¹¹

Thus, an anti-discrimination provision would go a long way to protecting the rights of both immigrant and non-immigrant Marylanders who apply for a limited use driver's license under this Act.

IV. Conclusion

Providing universal access to driver's licenses is a critical element of treating all of Maryland's residents with equal dignity and respect because it is critical to ensuring that all Marylanders have access to the necessities of daily life. The two-tiered system proposed in this bill would ensure that the provision of such access does not affect its compliance with REAL ID standards.

For all these reasons, the ACLU of Maryland urges a favorable report on this proposed legislation.

⁹ CITIZENS WITHOUT PROOF: A SURVEY OF AMERICANS' POSSESSION OF DOCUMENTARY PROOF OF CITIZENSHIP AND PHOTO IDENTIFICATION, Brennan Center for Justice, November 2006, available at www.brennancenter.org/page/-/download_file_39242.

¹⁰ *Lozano v. Hazleton*, 496 F.Supp. 477, 531 (M.D. Pa. 2007).

¹¹ *Id.*